

INDIRECT TAXES UPDATE – 134

Changes Effective from 14th May 2015
(date on which Finance Bill received Presidential Assent)

Amendments in the Central Excise Act, 1944

1. Section 11A stands amended as follows:

- (i) category of cases where extended period of time applies but the transactions are recorded in the specified record, will be removed from the statute,
- (ii) provision relating to relevant date also amended to provide definition of relevant date in respect of cases where a return is not filed on the due date and where only interest is required to be recovered,
- (iii) provisions of section 11A will not apply to cases where the non-payment or short payment of duty is reflected in the periodic returns filed and that in such cases recovery of duty will be made in such manner as may be prescribed in the rules.

2. Section 11AC is substituted so as to rationalize the penalty in the following manner:

- (i) in cases not involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Central Excise Act or rules with the intent to evade payment of excise duty-
 - a) in addition to the duty as determined under section 11A(10), a penalty not exceeding 10% of the duty so determined or `5000, whichever is higher, will be payable;
 - b) if duty and interest payable thereon under section 11AA is paid either before issue of show cause notice or within 30 days of issue of show cause notice, no penalty will be payable and all proceedings in respect of said duty and interest will be deemed to be concluded;
 - c) if duty as determined under section 11A(10) and interest payable thereon under section 11AA is paid within 30 days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty will be equal to 25% of the penalty so imposed, provided that such reduced penalty is also paid within 30 days of the date of communication of such order.
- (ii) in cases involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Central Excise Act or rules with the intent to evade payment of excise duty-
 - a) in addition to the duty as determined under section 11A(10), a penalty equal to the duty so determined will be payable.
 - b) if duty and interest payable thereon under section 11AA is paid within 30 days

of communication of show cause notice, the amount of penalty payable will be 15% of the duty demanded, provided that such reduced penalty is also paid within 30 days of communication of show cause notice and all proceedings in respect of said duty, interest and penalty will be deemed to be concluded;

- c) if duty as determined under section 11A(10) and interest payable thereon under section 11AA is paid within 30 days of the date of communication of order of the Central Excise Officer who has determined such duty, the amount of penalty will be equal to 25% of the duty so determined, provided that such reduced penalty is also paid within 30 days of the date of communication of such order; and
- (iii) If the duty amount gets modified in any appellate proceeding, then the penalty amount mentioned in (ii) (a) above and interest will also stand modified accordingly. Where the duty amount is increased in the appellate proceedings, the benefit of reduced penalty as specified will be admissible if duty, interest and reduced penalty in relation to such increased amount is paid within 30 days of such appellate order.
3. Section 32B has been amended so as to enable Vice-Chairman or Member of the Settlement Commission to officiate as Chairman, in the absence of Chairman of the Settlement Commission.
 4. Penalty provided under sub-sections (4) and (5) of section 37 has been enhanced from `2000 to `5000.

Amendments in the Customs Act, 1962

1. Section 28 which deals with recovery of duties, penalty etc. is amended to provide as follows:
 - (a) in cases not involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of duty, no penalty will be imposed if the amount of duty along with interest, is paid in full within 30 days from the date of receipt of the notice and the proceedings in respect of such person or other persons to whom the notice is served will be deemed to be concluded;
 - (b) in cases involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of duty, the amount of penalty payable to be reduced to 15% (instead of the present 25%) if the amount of duty in full or in part, as may be accepted, along with interest and such reduced penalty, is paid within 30 days from the date of receipt of the notice.
2. Section 112 providing penalty for improper importation of goods, etc./ section 114 providing penalty for attempt to export goods improperly, etc. has been amended to provide that any person who, in relation to any dutiable goods, other than prohibited goods, does or omits to do any act which would render such goods liable to confiscation under section 111/ section 113 respectively, or abets the doing or omission of such an act, will, subject to the provisions of

section 114A, be liable to a penalty not exceeding 10% of the duty sought to be evaded OR `5000, whichever is greater.

However, in cases of short levy or non-levy or short payment or non-payment and erroneous refund of duty for reasons of collusion or any willful mis-statement or suppression of facts, if the duty as determined under section 28(8) and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section will be 25% of the penalty so determined.

Common Amendments under Central Excise and Customs

1. Proviso to section 31(c) of the Central Excise Act, 1944/ proviso to section 127A(b) of the Customs Act, 1962 have been amended to provide that when any proceeding is referred back, whether in appeal or revision or otherwise, by any court, Appellate Tribunal Authority or any other authority to the adjudicating authority for a fresh adjudication or decision, then such case will not be entitled for Settlement.
2. Certain provisions relating to Settlement Commission, which are now redundant, are now omitted.

SERVICE TAX AMENDMENTS

1. Amendment in Service Tax Rules

- (a) Rule 6 (6A) which provide for recovery of service tax self-assessed and declared in the return under section 87 has been omitted.
 - (b) In respect of services related to *Air Travel Agent, Life Insurance, Money Changer & Lottery distributor and selling agent*, the service provider would be allowed to pay service tax at an alternative rate subject to the conditions as prescribed under rule 6 (7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994.
2. Consideration for a taxable service will include all reimbursable expenditure or cost incurred and charged by the service provider and amount retained by the distributor or selling agent of lottery from gross sale amount of lottery ticket or the discount received.

3. Government defined in Service Tax Law:

“Government means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder”

4. Amendment in definition of ‘service’ i.e. Section 65B(44):

Following activities has been specifically excluded from the term ‘transaction in money’ or we can say following activities has been specifically included in definition of ‘service’:-

- (a) Services by chit fund foreman by way of conducting a chit; and
- (b) Services in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing a lottery of any kind

5. Clarification on classification of input services used for providing output services

Section 66F(1) provides that an input service shall be classified independent to the nature of main services, for the provision of which it is utilized. Finance Bill 2015 has clarified this through following illustration.

“As illustrated, reference to service provided by the Reserve Bank of India (RBI), in section 66D (b) does not include any agency service provided by other banks to RBI, as such agency services are input services used by RBI for provision of its main service. Accordingly, banks providing agency service to or in relation to services of RBI, are liable to pay Service tax on the agency services so provided by virtue of the existing section 66F (1).”

6. Section 73 has been amended in the following manner:

- (a) A new sub-section (1B) is being inserted to provide that recovery of the Service Tax amount self-assessed and declared in the return but not paid will be made under section 87, without service of any notice under sub-section (1) of section 73; and
- (b) sub-section (4A) that provides for reduced penalty if true and complete details of transaction were available on specified records, has been omitted.

7. Amendments to Section 76: Penalties for cases not involving fraud, collusion etc.

Provisions of Section 76 stand amended to rationalize the provisions relating to penalties, in cases not involving fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax, in the following manner,

- (a) penalty not to exceed 10% of Service Tax amount involved in such cases;
- (b) no penalty is to be paid if Service Tax and interest is paid within 30 days of service of notice under section 73 (1) and proceedings in respect of such service tax and interest will be deemed to have been concluded.
- (c) a reduced penalty equal to 25% of the penalty imposed by the Central Excise officer by way of an order is to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order; and
- (d) if the amount of penalty is increased by Commissioner (Appeals), the Appellate Tribunal or Court, as the case may be, over and above the amount determined under section 73 (2), the time period of 30 days for paying a reduced penalty i.e. 25% of the penalty imposed will be counted from the date of order of the Commissioner (Appeals), the Appellate Tribunal or Court.

8. Amendments to Section 78: Penalties for cases involving fraud, collusion etc.

Provisions of Section 78 stand amended to rationalize penalty, in cases involving fraud or

collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax, in the following manner,-

- (a) Penalty will be 100% of Service Tax amount involved in such cases. However, in respect of the cases where the details relating to such transactions are recorded in specified record for the period 8th April 2011 to 14th May 2015, the penalty will be 50% of the service tax so determined.

Specified Records here mean *“records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement; the invoices recorded by the assessee in the books of accounts will be considered as specified records.”*

- (b) a reduced penalty equal to 15% of the Service Tax amount is to be paid if Service Tax, and interest is paid within 30 days of service of notice in this regard and proceedings in respect of such service tax, interest and penalty will be deemed to have been concluded.
- (c) a reduced penalty equal to 25% of the Service Tax amount, determined by the Central Excise officer by an order, is to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order; and
- (d) if the amount of *service tax is modified* by Commissioner (Appeals), the Appellate Tribunal or Court, as the case may be, then the interest and penalty amount will also stand modified accordingly, and benefit of reduced penalty (25% of service tax amount) will be admissible if Service Tax, interest and reduced penalty is paid within 30 days of such appellate order. The time period of 30 days for paying the interest and the reduced penalty i.e. 25% of the service tax amount will be counted from the date of order of the Commissioner (Appeals), the Appellate Tribunal or Court.

9. Section 78B: Transition Provision

Section 78B (transition provision) provides that:

- (a) amended provisions of sections 76 and 78 will apply to cases where either no notice is served, or notice is served under sub-section (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President; and
- (b) in respect of cases where notice is served under sub-section (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73 before 14th May 2015, the period of 30 days will be counted from 14th May 2015 for the purpose of closure of proceedings on payment of service tax and interest under section 76 (1) and for payment of service tax, interest and penalty under section 78(1).

10. Section 80 stands omitted w.e.f. 14th May 2015

- 11. Section 86** stands amended to prescribe that remedy against the order passed by Commissioner (Appeal), in a matter involving rebate of Service Tax, will lie in terms of section 35EE of the Central Excise Act. It is also provided that all appeals filed in Tribunal after 28th May 2012 and pending on 14th May 2015 will be transferred and dealt in accordance with section 35EE of the Central Excise Act.

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