

INDIRECT TAXES UPDATE – 171

GOODS & SERVICES TAX

CBEC has recently released draft GST Rules on Registration, Payment, Invoice, Return and Refunds for comments/ suggestions. The Indirect Taxes Committee of ICAI has submitted its [suggestions](#) on said rules on 28th / 29th Sep, 2016 which has been hosted on the website of the committee www.idtc.icai.org.

SERVICE TAX

Exemption to taxable services provided by State Govt. etc. by way of granting long term lease of industrial plots to industrial units

Central Government vide [Notification No. 41/2016-Service Tax, Dated: September 22, 2016](#) has extended exemption from service tax payable under section 66B of Finance Act 1994 to taxable services provided by State Government Industrial Development Corporations/ Undertakings to industrial units by way of granting long term (30 years, or more) lease of industrial plots. However, this exemption is restricted to service tax payable on the one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease.

[\[Notification No. 41/2016-Service Tax, Dated: September 22, 2016\]](#)

No Service tax on Services by way of advancement of Yoga provided by Charitable or Religious Trusts and Institutions for the period 1st July 2012 to 20th October 2015

Central Government vide [Notification No. 42/2016-Service Tax, Dated: September 26, 2016](#) has provided that, for the period from 1st July 2012 to 20th October 2015 no service tax is required to be paid on the services provided by way of advancement of Yoga by entities registered under section 12AA of Income-tax Act, 1961 (Charitable or Religious Trusts and Institutions).

Prior to this amendment there was prevalent practice of service tax not being paid on aforesaid services during the specified period (1st July 2012 to 20th October 2015) on account of non-levy of service tax on such services. Though these services were liable to service tax, no service tax was being paid on them due to prevalent practice.

[\[Notification No. 42/2016-Service Tax, Dated: September 26, 2016\]](#)

Comments: Prior period exemption provided to Yoga Services.

Form ST 3 amended to include One Person Company, KKC etc.

The Central Government vide [Notification No. 43/2016-Service Tax; Dated: September 28, 2016](#) has amended Service Tax Rules, 1994 in turn amending Form ST-3 (Service Tax Return u/s 70 of the Finance Act, 1994 & Rule 7 of Service Tax Rules, 1994) to give effect to the following changes:

- Insertion of word One Person Company with words Individual/Proprietary
- Insertion of word "Limited Liability Partnership", with the word "Partnership"
- Insertion of columns and entries relating to Krishi Kalyan Cess at relevant places.

[\[Notification No. 43/2016-Service Tax; Dated: September 28, 2016\]](#)

Revision of Monetary limits for issuing Service tax notice by officers

Central Government vide [Notification No. 44/2016-Service Tax, Dated: September 28, 2016](#) has amended the adjudication power of officers. The revised limits are as under:

S. No.	Rank of the Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice issued under the Finance Act 1994. (Amended Limits) <i><u>w.e.f. 28th September 2016</u></i>	Amount of service tax or CENVAT credit specified in a notice issued under the Finance Act 1994. (Prior Limits) <i><u>Prior to 28th September 2016</u></i>
(1)	Superintendent	Not exceeding Rs. 10 lakhs (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation).	Not exceeding Rs. 1 lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.)
(2)	Assistant Commissioner or Deputy Commissioner	Not exceeding Rs. 50 lakhs (except cases where Superintendents are empowered to adjudicate).	Not exceeding Rs. 5 lakhs (except cases where Superintendents are empowered to adjudicate.)
(3)	Joint Commissioner or Additional Commissioner	Rs. 50 lakhs and above but not exceeding Rs. 2 crores.	Above Rs. 5 lakhs but not exceeding Rs. 50 lakhs (JC) & Above Rs. 20 lakhs but not exceeding Rs. 50 Lakhs

			(AC)
(5)	Commissioner	Without limit.	Without limit.

[\[Notification No. 44/2016-Service Tax, Dated: September 28, 2016\]](#)

Comments: The increase in monetary limits will help in disposal of cases at departmental level itself. E.g. Cases upto Rs. 2 crores will be dealt at AC/ JC level itself. However, this also means insertion of one more stage for adjudication as some of them are expected to go to CESTAT, which means more time for an appeal to reach the Tribunal as well as Pre-deposit impact.

Guidelines for arrest in relation to offences punishable under the Finance Act, 1994 and Central Excise Act, 1944

Presently, the power of arrest in Service Tax is available only if a person collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond the period of 6 months from the date on which such payment becomes due and the amount exceeds Rs. 2 crores.

In furtherance to above, Central Government vide [Circular No. 201/11/2016-Service Tax, Dated: September 30, 2016](#) has provided following factors which must invariably be kept in mind before arresting a person :

1. Conditions precedent- Legal - includes

- Collection of an amount exceeding **Rs.2 Crore** as service tax should be clear and self-evident from the invoices, bills, contracts, etc.
- The ST3 return filed by the assessee for the relevant period, showing the self-assessed value of taxable services and service tax paid should be available in file.
- Failure should be beyond the period of 6months from the date on which such payment becomes due.

2. Conditions precedent- Factual

- Is the alleged offender likely to hamper the course of further investigation by his unrestricted movement?
- Is the alleged offender likely to tamper with evidence or intimidate or influence witnesses?
- If the answer to both the questions is yes, then the decision to arrest can be made.
- If the alleged offender is assisting in the investigation and has deposited at least half of the evaded tax, then the need to arrest may not arise.

It is directed that henceforth arrest and prosecution of a person may be considered only in cases where evasion of Central Excise duty or misuse of CENVAT Credit is equal to or more than Rs. 2 crores as against earlier limit of Rs. 1 crore in order to maintain uniformity of practice in Central Excise and Service Tax.

It has further been reiterated that arrest and prosecution need not be resorted to in cases of technical nature i.e. where the additional demand of duty/tax is based totally on a difference of opinion regarding interpretation of law.

[\[Circular No. 201/11/2016-Service Tax, Dated: September 30, 2016\]](#)

Comments: This circular clarifies the required conditions needed to be fulfilled for arresting a person and therefore the ambiguity in the powers granted for the purpose of arrest have been resolved.

Exemption to Service of transportation, by educational institutions to students, faculty and staff

Central Government vide [Notification No. 45/2016-ST dated September 30, 2016](#) has exempted the services of transportation, by educational institutions to students, faculty and staff of such institutions from the levy of Service Tax for the period commencing on and from the 1st April, 2013 to 10th July, 2014.

[\[Notification No. 45/2016-ST dated September 30, 2016\]](#)

Comments: The unfair demand of Service Tax on the fees collected by schools towards transportation of students has now got settled by exempting the levy for the interim period.

Source: www.cbec.gov.in

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Secretary*

Indirect Taxes Committee The Institute of Chartered Accountants of India
ICAI Bhawan A-29, Sector -62, NOIDA (U.P.) India
Website: www.idtc.icai.org