

INDIRECT TAXES UPDATE - 132

CHANGES MADE IN FINANCE BILL, 2015 AS PASSED BY THE LOK SABHA

SERVICE TAX & CENVAT CREDIT

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

Finance Bill, 2015, after being passed in Lok Sabha on 30th April 2015, has modified the provisions of Section 76 to rationalize the provisions relating to penalties, in cases not involving fraud or collusion or willful 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,-

- i. penalty not to exceed 10% of Service Tax amount involved in such cases;
- ii. 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 shall be deemed to have been concluded.

(Lok Sabha while passing the Finance Bill has introduced the deeming clause for proceedings being concluded)

- iii. 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
- iv. 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 shall be counted from the date of order of the Commissioner (Appeals), the Appellate Tribunal or Court.

(Lok Sabha while passing the Finance Bill has substituted aforesaid earlier provision which provided that if the Service Tax amount gets reduced in any appellate proceeding, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25%) shall be admissible if service tax, interest and reduced penalty is paid within 30 days of such appellate order.)

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

Finance Bill, 2015, after being passed in Lok Sabha on 30th April 2015, has modified the provisions of Section 78 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,-

- i. Penalty shall 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 the date when the Finance Bill, 2015 receives the assent of the President, the penalty shall be 50% of the service tax so determined.

After being passed in Lok Sabha, the Finance Bill, 2015 has defined Specified Records to 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 shall be considered as specified records.”

- ii. 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 shall be deemed to have been concluded.
(Lokhsabha while passing the Finance Bill has introduced the deeming clause for proceedings being concluded)
- iii. 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
- iv. 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 shall also stand modified accordingly, and benefit of reduced penalty (25% of service tax amount) shall 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 shall be counted from the date of order of the Commissioner (Appeals), the Appellate Tribunal or Court.

(Lokhsabha while passing the Finance Bill has substituted aforesaid earlier provision which provided that if the Service Tax amount gets reduced in any appellate proceeding, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25%) shall be admissible if Service Tax, interest and reduced penalty is paid within 30 days of such appellate order)

Section 78B: Transition Provision

Finance Bill, 2015, after being passed in Lok Sabha on 30th April 2015, has modified the provisions of new section 78 B is to prescribe, by way of a transition provision, that,-

- i. amended provisions of sections 76 and 78 shall apply to cases where either no notice is served, or notice is served under subsection (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
- ii. 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 the date on which the Finance Bill, 2015 receives the assent of the President , the period of 30 days shall be counted from the date on which the Finance Bill, 2015 receives the assent of the President 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)

(Lokhsabha while passing the Finance Bill has substituted aforesaid earlier provision which provided that in respect of cases covered by sub-section (4A) of section 73, if 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 of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the Service Tax amount.)

Amendment in CENVAT Credit Rules, 2004

CBEC vide *Notification No.12/2015-Central Excise (N.T.), dated 30.04.2015* has amended Rule 3(7)(b) of the CENVAT Credit Rules, 2004 so as to allow utilisation of credit of Education Cess and Secondary & Higher Education Cess for payment of basic excise duty in the following situations:

- (a) Education Cess and Secondary & Higher Education Cess on inputs or capital goods **received in** the factory of manufacture of final product on or after the 1stMarch, 2015;
- (b) Balance 50% Education Cess and Secondary & Higher Education Cess on capital goods **received in** the factory of manufacture of final product in the financial year 2014-15; and
- (c) Education Cess and Secondary & Higher Education Cess on input services **received by** the manufacturer of final product on or after the 1stMarch, 2015.

[Notification No.12/2015-Central Excise (N.T.), dated 30.04.2015]

Amendment in Mega Exemption Notification 25/2015

CBEC vide *Notification No. 12/2015-ST, Dated: April 30, 2015* has amended Mega Exemption Notification No. 25/2012 - ST dated 20th June 2012 to exempt the following:

- (a) Service tax on services of General Insurance business provided under Pradhan Mantri Suraksha Bima Yojana (PMSBY) – Entry 26 item ‘p’
- (b) Service tax on services of Life Insurance business provided under Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) - Entry 26A item ‘e’
- (c) Service tax on services of Life Insurance business provided under Pradhan Mantri Jan Dhan Yojana (PMJDY) - Entry 26A item ‘f’
- (d) Service tax on services by way of collection of contribution under Atal Pension Yojana (APY) – Entry 26B

[Notification No. 12/2015-ST, Dated: April 30, 2015]

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