

Finance Bill 2015—Change and Impact on Taxability



Amid huge expectations and challenges facing the economy; on 28th February, 2015 the Finance Minister Mr. Arun Jaitley presented the Finance Bill, 2015 which brought with it a whole new set of changes in the indirect taxes. This Budget claims to be aimed at accelerating growth, enhancing investment and improving the quality of life. It also focuses on industrial growth, social security measures and long term reforms in the areas of infrastructure, banking and creating an environment for doing business in India with ease. While considering Goods and Service Tax (“GST”) as a ‘game changing reform’, Shri Arun Jaitley said that ‘GST will put in place a state-of-the-art indirect tax system by 1st April, 2016’. Further, in order to bring the current taxing provisions in line with the proposed plan of Goods and Service Tax, the Government has instigated required changes in this budget. While addressing the august gathering, the Finance Minister highlighted that the backdrop idea of advertising the taxing aspects is not only the GST but also the rising concern towards the environment.

Certain exemptions have been withdrawn and some new ones have been introduced, beneficial changes have been made in CENVAT Credit Rules, changes have been made to nullify impact of various judgments passed against the intention of the Government, procedure for registration has been simplified and made user friendly, to minimise the tax evasion by the service providers, the penal proceedings have been made hoarse. In this article,

we have tried to capture changes related to taxability categorising them according to date of applicability.

A. Changes Applicable w.e.f. 1st April, 2015

A.1 Rationalisation of Exemptions

1) Exemption presently available to services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration, (Entry 12 of mega exemption Notification No. 25/2012-ST dated 20.06.2012) in respect of the following taxable services has been withdrawn:

- a) A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;



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Hitherto, any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from Service Tax. The scope of this exemption is being widened to include all ambulance services.

- b) A structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- c) A residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation 1* to clause 44 of Section 65 B of the said Act;

Resultantly, with effect from 01.04.2015, service tax will be levied in respect of construction, completion, repair, maintenance *etc.* of Government Colleges, Hospitals, construction of residential complex for government employees and member of parliaments.

- 2) Similarly, exemption presently available to construction, erection, commissioning or installation of original works pertaining to an airport or port has been withdrawn (Entry 14 of mega exemption Notification No. 25/2012-ST dated 20.06.2012).
- 3) Exemption to services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theatre, has been limited only to such cases where consideration charged for such performance is up to ₹1,00,000 (*Entry 16 of mega exemption Notification No. 25/2012-ST dated 20.06.2012*). For the period 01.07.2012 to 31.03.2015, exemption was available for the whole consideration.
- 4) Exemption to transportation of food stuff by rail, or vessels or road has been restricted to milk, salt and food grains including pulses and rice. Transportation of agricultural produce is separately exempt, and this exemption would continue. (*Entries 20 and 21 of mega exemption Notification No. 25/2012-ST*).
- 5) Exemption has been withdrawn in respect of following taxable services:
 - (a) Services by a mutual fund agent to a mutual fund or asset management company,
 - (b) Services by distributor to a mutual fund or asset management company
 - (c) Services by selling or marketing agent of lottery ticket to a distributor or a selling

agent (*Entry 29 of mega exemption Notification No. 25/2012-ST dated 20.06.2012*).

Further, these services will fall under full reverse charge mechanism meaning thereby service tax on these services will be paid by mutual fund or asset management company or distributor or selling agent of lottery, as the case may be.

- 6) Exemption has been withdrawn in respect of taxable services by way of making telephone calls from-
 - (a) Departmentally run public telephone;
 - (b) Guaranteed public telephone operating only local calls;
 - (c) Free telephone at airport and hospital where no bills are being issued.

(*Entry 32 of mega exemption Notification No. 25/2012-ST dated 20.06.2012*).

A.2 Insertion of New exemptions

- 1) Hitherto, any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment, an authorised medical practitioner or para-medics is exempt from Service Tax. The scope of this exemption has been widened to include all ambulance services whether provided a clinical establishment, an authorised medical practitioner, para-medics or any other person. (*Substituted Entry 2 of mega exemption Notification No. 25/2012-ST dated 20.06.2012*).
- 2) Services of life insurance business provided under Varishtha Pension Bima Yojna have been exempted. (*Entry at 26A of mega exemption Notification No. 25/2012-ST dated 20.06.2012 amended*)
- 3) Services by operator of Common Effluent Treatment Plant by way of treatment of effluent have been exempted. (Insertion of Entry 43 of mega exemption Notification No. 25/2012-ST).
- 4) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not alter the essential characteristics of the said fruits or vegetables have been exempted. (Insertion of Entry 44 of mega exemption Notification No. 25/2012-ST).
- 5) Service provided by way of admission to a museum, national park, wild life sanctuary, tiger reserve or zoo have been exempted. These services when provided by the Government

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or local authority are already covered by the Negative List.

(Insertion of Entry 45 of mega exemption Notification No. 25/2012-ST).

- 6) Service provided by way of exhibition of movie by an exhibitor (theatre owner) to the distributor or an association of persons consisting of such exhibitor as one of its members, have been exempted.

(Insertion of Entry 46 of mega exemption Notification No. 25/2012-ST).

- 7) Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from Service Tax. Scope of this exemption has been widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS).

(Amendment in Notification No. 31/2012-ST dated 20.06.2012).

A.3 Amendment in provisions related to Abatement

- 1) Upto 31.03.2015, Service Tax was payable on 30% of the value of rail transport for goods and passengers, 25% of the value of goods transport by road by a goods transport agency and 40% for goods transport by vessels. The conditions prescribed also vary. A uniform abatement has been prescribed with effect from 01.04.2015 [*vide* Notification No. 26/2012-ST as amended by Notification No. 08/2015-ST dated 01.03.2015] for transport of goods by rail, road and vessel and Service Tax shall be payable on 30% of the value of such service subject to a uniform condition of non-availment of CENVAT Credit on inputs, capital goods and input services.
- 2) Upto 31.03.2015 Service Tax was payable on 40% of the value of air transport of passenger for economy as well as higher classes, *e.g.* business class. The abatement for classes other than economy has been reduced and Service Tax would be payable on 60% of the value of such higher classes with effect from 01.04.2015 [*vide* Notification No. 26/2012-ST as amended by Notification No. 08/2015-ST dated 01.03.2015]
- 3) Abatement of 30% of the amount charged has been withdrawn with effect from 01.04.2015 [*vide* Notification No. 26/2012-ST as amended

by Notification No. 08/2015-ST dated 01.03.2015] from services provided in relation to chit. Consequently, Service Tax shall be paid at the full rate by the chit fund foreman on the total consideration received by way of fee, commission or any such amount. However, the foreman would be entitled to take CENVAT Credit.

B. Changes Applicable from the date of Enactment of Finance Bill 2015

B.1 Certain activities have been specifically excluded from the term 'Transaction in Money'

By way of proposed amendment in Section 65B (44) of the Act, following activities have been included from definition of 'Service' by way of explanation:

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

The Delhi High Court in case of *Delhi Chit Fund Association vs. Union of India [2013 TIOL 331 HC DEL ST]* have taken a view that the activities by chit fund foreman to chit fund and lottery related activities are essentially 'transaction in money' owing to specific exclusion to money changer services.

The proposed amendment overrules the impact of decision and accordingly these activities shall be liable to Service Tax.

B.2 Clarification on input services used for providing output services

Section 66F(1) provides that unless otherwise specified reference to a service (herein referred

At present, Service Tax is payable on 30% of the value of rail transport for goods and passengers, 25% of the value of goods transport by road by a goods transport agency and 40% for goods transport by vessels. The conditions prescribed also vary. A uniform abatement is now being prescribed for transport by rail, road and vessel and Service Tax shall be payable on 30% of the value of such service subject to a uniform condition of non-availment of CENVAT Credit on inputs, capital goods and input services.

The High court of Delhi in the decision of *Intercontinental Technocrats 2013 (29) STR 9* held that inclusion of the value of reimbursements in the value of taxable services by way of Rule 5(1) of the Service tax Rules 1994, is beyond the provisions of Section 67. In another step, to clarify the position of statute, the Finance Bill proposes to amend the definition of 'consideration' under Section 67 of the Act to empower the inclusion of the value of reimbursements in the value of taxable services in the principle statute.

to as main service) shall not include a service i.e., input service which is used for providing main service. The following illustration is proposed to be inserted in Section 66F(1) to clarify the principle of interpretation as well as to nullify the judgment of *M/s. Canara Bank vs. Commissioner of Service Tax, Bangalore* reported as 2012(6) TMI 274:

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of Section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in Section 66D and hence, such service is leviable to service tax.

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).

B.3 Definition of 'consideration' has been amended to include reimbursement of expenses in value of taxable service

The High court of Delhi in the decision of *Intercontinental Technocrats 2013 (29) STR 9* held that inclusion of the value of reimbursements in the value of taxable services by way of Rule 5(1) of the Service tax Rules 1994, is beyond the provisions of Section 67.

With a view to nullify the above pronouncement, Finance Bill, 2015 proposes to substitute the definition of 'consideration' given *vide*

Explanation (a) to Section 67 of the Act to empower the inclusion of the value of reimbursements in the value of taxable services in the principal statute. Similarly, amount retained by lottery distributor or selling agent over and above commission or fee shall be part of consideration for service. The proposed substituted Explanation (a) to Section 67 reads as follows:

'Consideration' includes—

- (i) any amount that is payable for the taxable services provided or to be provided;
- (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;
- (iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket."

C. Changes Applicable w.e.f. a Date to be notified after the Enactment of the Finance Bill, 2015

C.1 Service Tax on Amusement Facility and Entertainment Events

The Negative List entry under Section 66D(i) of Finance Act, 1994 [that covers 'admission to entertainment events or access to amusement facilities'] is proposed to be omitted. The implication of these changes would be as follows,-

- a) Service Tax shall be levied on the services provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks.
- b) Service Tax is also to be levied on services by way of admission to entertainment event of concerts, pageants and musical performances concerts, award functions and sporting events other than recognised sporting event.

Further, exemption has been granted [*vide* Entry 47 of mega exemption Notification] from

a date to be notified for services by way of right to admission to,-

- a) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;
- b) recognised sporting event;
- c) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than ₹500 per person.”

For the purpose of above Entry 47, “Recognised sporting event” means any sporting event,-

- i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;
- ii) covered under entry 11.

C.2 Service Tax on Liquor

By virtue of clause (f) of Negative List; any process amounting to manufacture or production of goods is excluded from the levy of Service Tax. Clause (f) is proposed to be amended so as to provide specific exclusion for alcoholic liquor for human consumption. Currently, definition of ‘process amounting to manufacture or production of goods’ given under clause (40) of Section 65B of the Finance Act, 1994 specifically include any process amounting to manufacture of alcoholic liquor for human consumptions. This definition is also proposed to be amended so as to exclude any process amounting to manufacture of alcoholic liquor for human consumption. Consequently, Service Tax shall be levied on contract manufacturing/job work for production of liquor.

Consequential amendment has been made in Entry 30 of *mega exemption* Notification No.

The Negative List entry under clause (j) of Section 66D of Finance Act, 1994 that covers ‘admission to entertainment events or access to amusement facilities’ is proposed to be omitted. Service Tax shall be levied on the services provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks.

The services provided by the overseas commission agents to the exporter of goods were exempt vide Notification No. 42/2012-ST subject to certain conditions. This Notification has no relevance after amendment in Place of Provision of Services Rules, 2012 vide Notification No. 14/2014-ST dated 11th July, 2014. Hence, by virtue of Notification No. 01.2015-ST, the aforesaid Notification has been rescinded.

25/2012-ST to exclude intermediate production of alcoholic liquor for human consumption.

Further, alcoholic liquor for human consumption are subject to State Excise. Therefore, amount of Service Tax levied will enhance the cost of manufacture of liquor.

C.3 Service Tax on Services provided by Government

In the extant taxing provisions, the services provided by Government or Local Authority subject to the exclusions contained in Section 66D were not liable to Service Tax. Service Tax applies on the “support service” provided by the Government or local authority to a business entity.

It is proposed to exclude all services provided by the Government or local authority to a business entity from the Negative List. Consequently, the definition of “support service” is proposed to be omitted. Further, these services shall fall under full reverse charge mechanism and accordingly business entity will have to pay Service Tax on services received from Government or Local Authority.

D. Withdrawal of Exemption Notification (w.e.f. 1st March, 2015)

The services provided by the overseas commission agents to the exporter of goods were exempt vide Notification No. 42/2012-ST dated 29.06.2012 subject to certain conditions. Consequent upon amendment made in Rule 2(f) and Rule 9 [whereby services of ‘intermediary’ of goods have been brought within the scope of Rule 9] of Place of Provision of Services Rules, 2012 with effect from 01.10.2014, the aforesaid Notification became redundant. Hence, by virtue of Notification No. 03/2015-ST dated 01.03.2015, the aforesaid Notification No. 42/2012-ST has been rescinded. ■