

Western India Regional Council

Welcome Members and Participants

Subject : Finance Bill, 2016– Service Tax Amendments

Day & Date : Saturday, 5th March, 2016

Venue : ICAI Bhavan,
Bandra Kurla Complex,
Bandra (East)
Mumbai – 400 051.

Faculty : CA. Naresh K. Sheth

Email ID : nksheth25@gmail.com

Preamble

- Presentation covers major Service Tax/Cenvat amendments proposed by the Finance Act, 2016
- Amendments are / will be effective from:
 - 1st March, 2016
 - 1st April, 2016
 - Enactment date – Date of president's assent to Finance Bill, 2016
 - 1st June , 2016
 - Retrospective dates (beneficial amendments)Effective date for amendments is specified in relevant slide.
- Reference to following in presentation means:
 - The Act - Finance Act, 1994
 - STR – Service Tax Rules, 1994
 - CCR – Cenvat Credit Rules, 2004
 - POTR – Point of Taxation Rules, 2011
 - SBC – Swachh Bharat Cess
 - KKC – Krishi Kalyan Cess
 - Notification No. 25/2012-ST dated 20.06.2012- Mega Exemption Notification

Basic to Start With

➤ Budgeted Revenue:

Particulars	F.Y 2016-17 (Rs. In Crores)	F.Y 2015- 16 (Rs. In Crores)
Customs	2,30,000/-	2, 08, 336/-
Union Excise Duties	3,17,860/-	2, 29,808/-
Service Tax	2,31,000/-	2, 09, 774/-
Total	7, 78, 860/-	6, 47, 918/-

- Service tax estimate for F. Y. 2016-17 is **Rs. 2,31,000/- Crores** as against revised estimate for F. Y. 2015-16 of **Rs. 2, 09, 774/- Crores**
- Service tax revenue target is approximately **higher by 10%**
- **No reference to Goods and Services Tax ('GST') in budget speech or Finance Bill**
- **No amendments in :**
 - Basic threshold exemption limit
 - Place of Provision of Service Rules, 2012

Krishi Kalyan Cess

Effective : 01.06.2016

Krishi Kalyan Cess ("KKC")

- A new cess called as "Krishi Kalyan Cess " levied on **all** or **any** of **taxable services vide proposed insertion in Chapter VI of Finance Act**
- KKC would be 0.5% of value of taxable service
- KKC will be in addition to Service tax and SBC
- KKC will be effective from **01.06.2016**
- Provisions of the Act and Rules in relation to levy and collection including:

➤	How to apply Krishi Kalyan Cess	Exemption	where tax is payable	Interest	Penalty	on abated value of services?
---	---------------------------------	-----------	----------------------	----------	---------	------------------------------

GTA Service of Rs. 100 and tax payable on abated value of Rs.30				
Alternative	Basic Tax (Rs.)	SBC (Rs.)	KKC (Rs.)	Effective tax (Rs.)
First	4.20	0.15	0.15	4.50
Second	4.20	0.15	0.50	4.85

Krishi Kalyan Cess ("KKC")

- How to apply KKC where tax on specified services is payable at alternate rate?

Alternate manner of calculating KKC	Basic Fare	Service tax @ 1.4% of basic fare U/R 6(7) of STR	KKC @ 0.5% of value of taxable service
0.5% of Service tax	1,00,000	1400	Rs. 7 (0.5% of Rs.1400)
0.5% of the assumed value of the service	1,00,000	1400	Rs 50 (0.50% of Rs.10,000)
Amount payable (alternate service tax to includes KKC)	1,00,000	1400	Nil
Work out value of actual services and pay KKC thereon	??	??	??

- Notification 25/2015 dated 12.11.2015 clarified in respect of SBC and suggested second alternative
- No such clarification for KKC till date

Krishi Kalyan Cess ("KKC")

- **Whether KKC will be cenvatable?**
 - FM in Budget speech stated that KKC is cenvatable.
 - TRU at Para no 3.1 of Circular no 334/8/2016- TRU dated 29.02.2016 clarifies that KKC is cenvatable
 - Enabling statutory provisions are not made in Cenvat Credit Rules, 2004
 - In absence of statutory provisions, whether assessee will be eligible for cenvat of KKC

- **Whether KKC will apply to the transactions concluded before 01.06.2016?**
 - Levy cannot operate retrospectively
 - Section 67A is also amended to empower Central Government to amend Point of Taxation Rules, 2011
 - Rule 5 of POTR is amended to provide that it applies to new levy also
 - If service consideration is received on or after 01.06.2016, KKC will apply in terms of Rule 5 of POTR
 - This is against avowed policy of Government not to levy tax retrospectively

Effective Tax Rate

Effective Tax Rate

- Basic service tax rate remains unchanged
- Swachh Bharat Cess ('SBC') remains unchanged
- New Cess "Krishi Kalyan Cess" ('KKC') will be levied w.e.f **01.06.2016**
- Effective tax rate :

Component	Effective tax rate upto 31.05.2016	Effective tax rate on or after 01.06.2016
Basic service tax	14%	14%
Swachh bharat Cess (SBC)	0.5%	0.5%
Krishi Kalyan Cess (KKC)	-	0.5%
Total	14.50%	15%

Effective Tax Rate

- Presently alternate service tax rate on life insurance premium (where entire premium paid by the policy holder is not towards risk covered) is as under:

1st year premium	3.75% of premium charged from policy holder
Subsequent years premium	1.81% of premium charged from policy holder

Above alternate tax rate is applicable for single premium annuity policies also

- Alternate effective tax rate in respect of single premium annuity policies will be **1.4%** of premium **with effect from 01.04.2016** irrespective of :
 - Premium for 1st year and
 - Premium for subsequent years
- Impact of KKC on alternate tax rates and abated value of services is already discussed in

earlier slides

Effective Alternate Tax Rate

➤ Alternate Effective Tax Rate for specified services:

Description	Reference to Rules	Upto 31.05.2016 (Including SBC)	On or after 01.06.2016 (Including SBC and KKC)
Air Travel Agents			
- Domestic Bookings	Rule 6(7)	0.725%	0.75%
- International Bookings	Rule 6(7)	1.45%	1.50%
Life Insurance (other than single premium annuity policy)			
- First Year Premiums	Rule 6(7A)	3.625%	3.75%
-Subsequent Premiums	Rule 6(7A)	1.8125%	1.875%

Effective Alternate Tax Rate

Description	Reference to Rules	Upto 31.05.2016 (Including SBC)	On or after 01.06.2016 (Including SBC and KKC)
Single premium annuity policy	Rule 6(7A)	3.625%	1.4%
Money Changing			
- Upto Rs.100000	Rule 6(7B)	0.145% (Min of Rs. 35)	0.15% (Min of Rs. 35)
- Between Rs. 100000 and Rs.1000000	Rule 6(7B)	Rs. 145 + 0.0725% of excess over 1,00,000	Rs.150 + 0.075% of excess over 1,00,000
- Above Rs. 1000000	Rule 6(7B)	Rs. 797.50 + 0.0145% of excess over 10,00,000 (Max of Rs. 7,000)	Rs.825 + 0.015 % of excess over 10,00,000 (Max of Rs. 7,000)

Effective Alternate Tax Rate (Without Swachh Bharat Cess)

Description	Reference to Rules	Upto 31.05.2016	On or after 01.06.2016
Distribution of Lottery Tickets			
- Guaranteed Prize Payout less than 80%	Rule 6(7C)	Rs. 8492.85 for every Rs. 10 lakhs	Rs. 8785.71 for every Rs. 10 Lakhs
- Guaranteed Prize Payout more than 80%	Rule 6(7C)	Rs. 13257.14 for every Rs. 10 lakhs	Rs. 13714.28 for every Rs. 10 Lakhs

Note : Above referred effective rate is calculated on the assumption that Government will come out with clarification for calculation of KKC on line of SBC

Abatement – Effective Tax Rate

Service	Upto 30.05.2016	From 01.06.2016
Financial leasing and hire purchase	1.45%	1.5%
Transport of goods by rail by Indian railway	4.35%	4.5%
Transport of goods in container by rail by any person other than Indian Railways	4.35%	6%
Transport of passengers by rail	4.35%	4.5%
Supply of food along with renting of premises (banquet, conference, etc.)	10.15%	10.5%
Transport of passengers by air by Economy class	5.8%	6%
Transport of passengers by air by other than economy class	8.7%	9%
Accommodation services in Hotels, inns, guest houses, clubs, campsite or other commercial places	8.7%	9%

Abatement – Effective Tax Rate

Service		Upto 30.05.2016	From 01.06.2016
Goods Transport Agent services (other than used household)		4.35%	4.5%
Goods transport agency in relation to transportation of used household goods		4.35%	6%
Chit fund Services of chit fund in relation to chit		-	10.50%
Renting of a motor cab		5.80%	6%
Transport of passengers by contract carriage or Radio taxi or a stage carriage		5.80%	6%
Transport of goods in a vessel		4.35%	4.50%
Services by a tour operator in relation to:			
i	Only accommodation booking	1.45%	1.50%
ii	Package Tour includes transportation, accommodation, food, tourist guide, entry to monument, etc	3.625%	4.50%
iii	Any other services by Tour Operator	5.80%	

Abatement – Effective Tax Rate

Service	Upto 30.05.2016	From 01.06.2016
Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer wholly or partly except where entire consideration is received after issuance of completion certificate by competent authority -		
(a) For residential unit satisfying both the following conditions	3.625%	4.5%
i Carpet area of the unit is less than 2000 Sq .Ft. ; and		
ii The amount charged for the unit is less than Rs. 1 Crore		
(b) For other than (a) above	4.35%	

Definition of “Service”

[Section 65B (44)]

- **w.e.f. Date of enactment of Finance Bill,2016.**

Clarification on Definition of “Service”

- **Services of Lottery Distributors / Selling Agent is specifically excluded from transaction in money or actionable claim [Explanation 2 to Section 65B(44)]:**
 - Any activity carried out by a lottery distributor or a selling agent on behalf of **State Government** in accordance with provisions of **Lotteries (Regulations) Act, 1998** will not be regarded as “Transaction in Money or Actionable Claim”
 - Transaction in money or actionable claim is not a “Service”
 - By Excluding activities of lottery distributor/ Selling Agent of **State Government** from money or actionable claim transactions, their activities are now brought under definition of “**Service**” and are liable to service tax
- **Hon’ble Sikkim High Court in the case of Future Gaming & Hotel Services Pvt. Ltd. & Others Vs UOI (2015) 40 STR 833** has held that the State and distributors/selling agents work on principal to principal basis (as seller and buyer of lottery tickets) and hence service tax is not leviable
- It is presumption of Government that Lottery (Regulation) Act provides that relation of State and Distributor/Selling agent of lottery is on principal to agent basis and hence this amendment

Expansion of “Declared Service”

- Following new entry is proposed to be inserted in u/s 66E i.e. “Declared Service”
 - “Assignment by the government of the right to use the radio-frequency spectrum and subsequent transfers thereof”
- Honorable Karnataka High Court in case of **Bharti Airtel Ltd vs State of Karnataka [2012 (25) STR 514 (kar)]** that “artificially created light energy” used by telecom service providers as a carrier for data / information through optical fibre cable broadband lines would not constitute “goods” and such transactions would attract service tax and not VAT
- Government out of abundant precaution has declared following to be service:
 - assignment of radio frequency spectrum by government
 - subsequent transfer thereof
- In absence of corresponding amendment in VAT laws and definition of ‘goods’ in Sale of Goods Act 1930, issue of levy of VAT on radio frequency spectrum would still remain

Negative List of Services (Section 66D)

Educational Services and Vocational Education Course– Section 66D(I)

➤ **Position till date of enactment of Finance Bill:**

- Services by way of :
 - Pre-school education and education up to higher secondary school or equivalent;
 - Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
 - Education as a part of an approved vocational education course.

is under Negative List u/s 66D(I)

➤ **Amendments w.e.f date of enactment of Finance Bill :**

- Above services will be omitted from Section 66D(I) i.e negative list of services
- Such services will continue to be exempt under entry 9 of Mega Exemption Notification
- Definition of “Educational institution” and “approved vocational education

course” are inserted in clause 2 (oa) and 2(ba) respectively of Mega Exemption

Notification (Notification No. 00/2014 dated 01.03.2014)

05.03.2016

21

Educational Services and Vocational Education Course– Section 66D(I)

➤ **Implications of above amendments and Points for consideration:**

- Presently Education Services are “non –taxable service” and post amendment it will become “taxable but exempted service”
- Educational institution will be burdened with administrative hassles such as:
 - Taking service tax registration
 - Filing of ST-3 returns
 - Declaration of education revenue in ST-3 returns
- Autonomous power will now be vested in the hands of Tax Administrators to expand, curtail and withdraw this exemption
- No need of parliament’s approval for modifying taxability or otherwise of education services

Transportation of passengers– Section 66D(o)(i)

➤ **Position till 31.05.2016 :**

Passenger Transportation Service by a stage carriage (whether air-conditioned or non-air conditioned) are covered under Negative List u/s 66D(o)(i) and hence not taxable

➤ **Position on or after 01.06.2016 :**

- Above Services will be omitted from Section 66D(o)(i) i.e negative list of services
- However, passenger transportation services by a non-air-conditioned stage carriage will be exempt under entry 23(bb) of Mega Exemption Notification
- Passenger Transportation by air-conditioned stage carriage will be liable to service tax on **abated value** of service
- Even the Government Undertakings operating air-conditioned buses/coaches will be liable to Service Tax

Transportation of Goods by aircraft or vessel– Section 66D(p)(ii)

➤ **Position till 31.05.2016 :**

Transportation of Goods by an aircraft or a vessel from a place outside India up to the customs station clearance in India (Ocean Freight and Air Freight on Import) are covered under u/s 66D(p)(ii) i.e Negative List and hence not taxable

➤ **Position on or after 01.06.2016 :**

- Above services(Ocean Freight and Air Freight for Import) will be omitted from section 66D(p)(ii) i.e. Negative List
- However, Air Freight on Import of goods will be exempt under entry 53 of Mega Exemption Notification
- Ocean Freight on Import of Goods (transportation of goods by vessel from outside India) will liable to service tax on **abated value** of service

➤ **Implications of Amendment:**

- Shipping Companies Registered in India will be liable to Service Tax on Import Freights
- Ocean freight paid to foreign shipping line by a business entity located in India will be liable to service tax under reverse charge
- Service Provider or manufacturer will be entitled to cenvat of service tax paid on such freight subject to CCR

Government Or Local Authority Services – Section 66D(a)

› Position till 31.03.2016:

- Services provided by Government or local authority is in the Negative List u/s 66D(a) **except** following:
 - Speed post and express parcel services
 - Life insurance and agency services
 - Services in relation to aircraft or a vessel, inside or outside the precincts of a port or airport
 - Transport of goods or passengers
 - **Support services** (other than those mentioned above) provided to **business entity**

› Amendments w.e.f date 01.04.2016:

- The term “**support services**” is replaced by the words “**any services**”
- Section 65B(49) defining term “support services” is deleted

› Implications:

- Amendment expands the gamut of taxable services provided by Government or local authority
- Earlier only **support services [as defined U/S 65B(49)]** provided by government to business entity was taxable (in addition to other specified services)
- **All services** provided by government to **business entity** will be taxable (in addition to other specified services) **on or after 01.04.2016**

Government Or Local Authority Services – Section 66D(a)

➤ Summarized position of taxability on or after 01.04.2016

Description of services	Service Recipient	Tax implications
Speed Post / Express Parcel service	Any person other than government department	<ul style="list-style-type: none"> • Taxable at applicable rate • Tax payable by government under straight charge
Life insurance and agency services		
Services in relation to aircraft or vessel		
Transport of goods or passengers		
Any services (other than those listed above)	Non business entity	Non – Taxable
	Business entity	<ul style="list-style-type: none"> • Taxable at applicable rate • Service tax payable under reverse charge by business entity
Renting of immovable property for commercial use	Non business entity	Non – Taxable
	Business entity	<ul style="list-style-type: none"> • Taxable at applicable rate • Tax payable by government under straight charge

Government Or Local Authority Services – Section 66D(a)

› Points for consideration :

- Whether statutory/sovereign functions of the government are “service”?
- Whether following amount paid are consideration towards services liable to service tax :
 - Fees paid to Ministry of Corporate Affairs for uploading returns / forms
 - Fees paid to Registrar of Firms
 - License fees paid to Central or State Government
 - Amount paid for mining rights, spectrum etc
 - Registration charges for property
 - Plan approval fees, regularization premium, scrutiny fees paid to Corporation
 - Shop and establishment license fees paid to Corporation
 - Penalty for infringement of any law

Exemptions

Exemptions Restored with retrospective date

Insertion of Sections 101, 102 and 103

**Amendments in Mega Exemption Notification vide Notification
No. 9/2016 – ST dated 01.03.2016**

Restoration of Exemption – Construction Services for canal,dam,etc

- Governmental Authority was defined (**during period 01.07.2012 to 29.01.2014**) under clause 2(s) of Mega Exemption Notification to mean:
 - Any Board, an Authority or any other body established with 90% or more participation by way of equity or control by Government; **and**
 - Set up by an Act of Parliament or a State Legislature
- Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration services provided in respect of canal, dam or other irrigation works to Governmental Authorities was exempt under entry 12(d) of Mega Exemption Notification w.e.f 01.07.2012
- Many Boards/Bodies were not covered under above referred definition of Governmental Authorities and hence above exemptions were denied to such entities
- Above referred definition of Governmental Authority was amended on 30.01.2014 wherein the words "**and**" is substituted by "**or**" expanding meaning of Governmental Authority
- Specified Services provided during the period **01.07.2012 to 29.01.2014** in respect of canal , dam or other irrigation works to Governmental Authority became exempt
- Section 101 is proposed to be inserted enabling service provider to claim **refund of service tax paid** on above referred services provided during the period 01.07.2012 to 29.01.2014
- An application for such refund is to be made within 6 months from the date of enactment of Finance Bill, 2016

Specified Services provided to Government, Local Authority, etc

➤ **Entry 12A of Mega Exemption Notification r.w . Proposed Section 102 of the Act:**

Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration services to **Government, local authority or governmental authority in respect of :**

Specified Service relating to	01.04.2015 to 29.02.2016	Contracts executed prior to 01.03.2015	Contracts executed on or after 01.03.2015
a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession	Exemption Restored	<ul style="list-style-type: none"> • Exempt subject to following conditions: - Contracts entered prior to 01.03.2015 - stamp duty paid prior to such date • Exemption available till 31.03.2020 	Taxable
a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;	Exemption Restored		
a residential complex predominantly meant for self-use or the use of their employees or person specified in Explanation 1 to section 65B(44)	Exemption Restored		

05.03.2016

N.K. Sheth & Company

Specified Services provided to Government, Local Authority, etc

01.03.2016

- Service provider will be entitled to refund of service tax paid on above referred services provided during the period 01.04.2015 to 29.02.2016
- An application for such refund is to be made within 6 months from the date of enactment of Finance Bill, 2016

Specified Construction, Erection, Commissioning or Installation Services – Entry 14A

- **Entry 14A of Mega Exemption Notification r.w . Proposed Section 103 of the Act :**
Construction, erection, commissioning or installation of Original Works pertaining to :

Pertaining to	01.04.2015 to 29.02.2016	Contracts executed prior to 01.03.2015	Contracts executed on or after 01.03.2015
<ul style="list-style-type: none"> • Airport • Port 	Exemption Restored	<ul style="list-style-type: none"> • Exempt subject to following conditions: <ul style="list-style-type: none"> - Contracts entered prior to 01.03.2015 - Stamp duty on such contract paid prior to such date - Facts as to execution of contract to be certified by Ministry of Civil Aviation or Ministry of Shipping 	Taxable

- Service provider will be entitled to refund of service tax paid on above referred services provided during the period 01.04.2015 to 29.02.2016
Exemption available till ~~31.03.2020~~

- An application for such refund is to be made within 6 months from the date of enactment of Finance Bill, 2016

Retrospective Amendment to Refund Notification

- Under Notification No 41/2012-ST dated 29.06.2012, exporter were entitled to service tax paid services used for export of the goods
- Said Notification was amended vide notification no 01/2016-ST dated 03.02.2016 to allow refund of service tax paid on services used beyond the factory or any other place or premises of production or manufacture of the goods for the export of said goods
- Prior to notification no. 01/2016-ST dt. 03.02.2016, exporters **were denied** refund of service tax paid by them during the period **01.07.2012 to 02.02.2016** on services used beyond the factory or any other place or premises of production or manufacture of the goods for the export of said goods
- Clause 157 of Finance Bill,2016 provides that Notification No 01/2016-ST dated 03.02.2016 will come into effect from 01.07.2012 and hence exporter will be entitled to refund of service tax paid by him during the period 01.07.2012 to 02.02.2016 on services used beyond the factory or any other place or premises of production or manufacture of the goods for the export of said goods
- Application for such refund is to be made within one month from the date of enactment of Finance Bill, 2016

New Exemptions

**Amendments in Mega Exemption Notification vide Notification
No. 9/2016 – ST dated 01.03.2016**

Notification No. 11/2016-ST dated 01.03.2016

- **Effective from 01.04.2016 unless specifically stated otherwise**

Construction services

- **Entry 13(ba) and (bb) in Mega Exemption Notification w.e.f 01.03.2016 :**
 - construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration services in respect of a **civil structure** or any **other original works** pertaining to:
 - “In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation” under Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana, only for existing slum dwellers
 - “Beneficiary-led individual house construction / enhancement” under Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana.
- **Entry 14(ca) in Mega Exemption Notification w.e.f 01.03.2016:**
 - construction, erection, commissioning or installation of original works pertaining to low cost houses up to a carpet area of 60 sq.m per house in a housing project approved by the competent authority under:
 - “Affordable housing in partnership” component of the housing for All (Urban) Mission / Pradhan Mantri Awas Yojana
 - Any housing scheme of a State Government

Transportation of Goods by Aircraft

➤ **Position upto 31.05.2016:**

Transportation of goods by an aircraft or vessel from a place outside India up to the customs station of clearance in India was in Negative List u/s 66D(p)(ii)

➤ **Position on or after 01.06.2016:**

Entry 53 is inserted in Mega Exemption Notification to exempt such service **W.e.f. 01.06.2016**

➤ **Taxability of Air Freight on Import is summarized as under:**

Period	Taxability	Remark
Upto 31.05.2016	Non-Taxable	Covered under Negative List u/s 66D(p)(ii)
On or after 01.06.2016	Exempt	Covered under Entry 53 of Notification No. 25/2012-ST dated 20.06.2012

Transportation of Passenger by Stage Carriage

➤ **Position up to 31.05.2016:**

Passenger Transportation (with or without accompanied belongings) by stage carriage is under Negative List u/s 66D(o)(i) and hence not taxable

➤ **Position on or after 01.06.2016:**

Passenger transportation services (with or without accompanied belongings) in non-air conditioned stage carriage is made exempt vide entry 23(bb) of Mega Exemption Notification w.e.f. **01.06.2016**

➤ **Taxability of transportation of passengers by stage carriage is summarized as under:**

Passenger Transportation by	Period	Taxability	Remark
Stage Carriage (both air-conditioned or non air-conditioned)	Upto 31.05.2016	Non-Taxable	Covered under Negative List u/s 66D(o)(i)
Non Air-conditioned stage carriage	On or after 01.06.2016	Exempt	Exempt vide Entry 23(bb) of Mega Exemption Notification
Air-conditioned stage carriage	On or after 01.06.2016	Taxable	Section 66D(o)(i) omitted from negative list

Exemption Clarified/Modified

➤ **Software Services :**

Packaged software recorded on media where retail sale price ('RSP') is to be affixed on the package of such media under Legal Metrology Act, 2009, only excise duty is payable on such software. Service tax is exempted on such software

Customized Software recorded on media not required to bear Retail Sales Price is exempted from service tax on value representing the value of medium along with freight and insurance

[Notification No. 11/2016-ST, No.11/2016-CE and No.11/2016-Customs all dated 01.03.2016]

➤ **Services by a performing artist in folk or classical art forms of music, dance or theatre:**

- Presently, above services are exempt upto Rs 1lakh per performance
- It is proposed to raise exemption limit to Rs 1.5 lakhs per performance
- This will be effective from 01.04.2016

[Entry No 16 of Mega Exemption Notification]

Other New Exemptions w.e.f 01.04.2016 unless specified otherwise

New Entry No. of Notification No. 25/2012-ST dated 20.06.2012	Description of service
9B	Services respect of specified courses (except executive development programme) provided by the Indian Institutes of Management (IIM) to its student [w.e.f 01.03.2016]
9C	Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship under Skill Development Initiative (SDI) Scheme
9D	Skill or vocational training provided by project implementation partners under Deen Dayal Upadhyay Grameen Kaushalya Yojana
26 (q)	General insurance services provided under "Niramaya Health Insurance" scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability

Other New Exemptions w.e.f 01.04.2016 unless specified otherwise

New Entry No. of Notification No. 25/2012-ST dated 20.06.2012	Description of service
26 C	Life insurance service provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India
49	Services provided by Employees Provident Fund Organization (EPFO) to employees.
51	Services provided by Securities and Exchange Board of India (SEBI) for protecting the interests of investors in securities, promoting the development of and regulation of the securities market.
52	Cold chain knowledge dissemination services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmer's Welfare
32	Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubatees subject to fulfillment of prescribed conditions

Exemptions Withdrawn

**Amendments in Mega Exemption Notification vide Notification
No. 9/2016 – ST dated 01.03.2016**

Construction, Erection, commissioning and Installation – Monorail or metro

➤ **Position up to 29.02.2016:**

Construction, Erection, Commissioning or Installation of original works ('specified construction') pertaining to railway **including monorail or metro** is exempt under Entry 14 of Mega Exemption Notification

➤ **Position on or after 01.03.2016:**

- Exemption in respect of above services is withdrawn **w.e.f. 01.03.2016**
- However, exemption in respect of above work for which contracts were entered into before 01.03.2016 (on which appropriate stamp duty is paid) **shall continue**

➤ **Taxability of the above services is summarized as under:**

Specified services pertaining to	Up to 29.02.2016	On or after 01.03.2016
Railway	Exempt	Exempt
Monorail, Metro (contracts entered before 01.03.2016)	Exempt	Exempt
Monorail, Metro (contracts entered on or after 01.03.2016)	N.A.	Taxable

Passenger Transportation by ropeway, cable car or aerial tramway

➤ **Position up to 31.03.2016:**

Passenger transportation (with or without accompanied belongings) by ropeway, cable car or aerial tramway is exempt under Entry 23(c) of Mega Exemption Notification

➤ **Position on or after 01.04.2016:**

Exemption in respect of above service is withdrawn **w.e.f. 01.04.2016.**

➤ **Taxability of the above services is summarized as under:**

Particulars	Up to 31.03.2016	On or after 01.04.2016
Passenger transportation by ropeway, cable car or aerial tramway	Exempt	Taxable

Legal services

- Exemption in respect of legal services provided by senior advocate is withdrawn
- Term 'senior advocate ' is defined under clause 2(zdd) of Mega Exemption Notification to mean 'senior advocate' as per section 16 of The Advocates Act, 1961 (25 of 1961)
- Taxability of the legal services is summarized as under:

Service provider	Service Recipient	Up to 31.03.2016	On or after 01.04.2016
Advocate or a partnership firm of advocates (except senior advocate)	Advocate or a partnership firm of advocates (including senior advocate)	Exempt	Exempt
	Non-business entity	Exempt	Exempt
	Business entity with T/O up to 10 lacs in preceding F.Y.	Exempt	Exempt
Senior Advocate	Advocate or a partnership firm of advocates (including senior advocate)	Exempt	Taxable
	Non-business entity	Exempt	Exempt
	Business entity with T/O up to 10 lacs in preceding F.Y.	Exempt	Taxable

➤ **Implications for senior advocates:**

- Liable to take service tax registration
- Liable to discharge service tax liability under straight charge
- Liable to file periodical returns
- Eligible to avail cenvat credit

➤ **Implications for arbitrators:**

- Arbitrators services is exempt under Entry 6 (c) of Mega Exemption Notification up to 31.03.2016
- Above exemption is withdrawn w.e.f 01.04.2016
- Arbitrator will be eligible for cenvat credit
- Arbitrator will be liable to:
 - Take service tax registration
 - Discharge service tax liability under straight charge
 - File periodical returns

➤ **Reverse charge not to apply in case of services provided by:**

- Senior advocate
- Arbitral tribunal

Abatement Notification

**Notification No. 26/2012- ST dated 20th June, 2012 amended
vide Notification No. 8/2016– ST dated 1st March, 2016**

Transport of Goods by Rail other than – Entry No. 2

➤ **Position till 31.03.2016:**

Particulars	Cenvat Availability	Taxable Portion	Abatement
Services by transport of goods by rail	Not available	30%	70%

➤ **Position on or after 01.04.2016:**

Particulars	Cenvat Availability	Taxable Portion	Abatement
Services by transport of goods by rail	Cenvat only on Input services	30%	70%

Transport of Goods by Rail by other than Indian Railways – Entry No.

➤ **Position till 31.03.2016:**

Particulars	Cenvat Availability	Taxable Portion	Abatement
Services by transport of goods by rail	Not available	30%	70%

➤ **Position on or after 01.04.2016:**

Particulars	Cenvat Availability	Taxable Portion	Abatement
Services by transport of goods in containers by rail person other than Indian Railways	Cenvat only on Input services	40%	60%

Transport of passengers by rail– Entry No. 3

➤ **Position till 31.03.2016:**

Particulars	Cenvat Availability	Taxable Portion	Abatement
Services by transport of goods by rail	Not available	30%	70%
➤ Position on or after 01.04.2016:			

Particulars	Cenvat Availability	Taxable Portion	Abatement
Services by transport of goods by rail	Cenvat only on Input services	30%	70%

Services of GTA - Entry No. 7 and 7A

➤ **Position till 31.03.2016:**

Particulars	Cenvat Availability	Taxable Portion	Abatement
Services of goods transport agency in relation to transportation of goods	Not available	30%	70%

➤ **Position on or after 01.04.2016:**

Particulars	Cenvat Availability	Taxable Portion	Abatement
Services of goods transport agency in relation to transportation of goods other than used household goods	Not available	30%	70%
Services of goods transport agency in relation to transportation of goods of used household goods		40%	60%

Services of foreman of chit fund - Entry No. 8

- **Position till 31.03.2016:**
 - No abatement during the period 01.04.2015 to 31.03.2016
- **Position on or after 01.04.2016:**

Particulars	Cenvat Availability	Taxable Portion	Effective rate
Services provided by a foreman of chit fund in relation to chit	Not available	70%	30%

Renting of motor cab- Entry No. 9

- An explanation BA has been inserted to Abatement notification to provide that:
 - fair market value of all goods (including fuel) and services supplied by the recipient to be included in value of services
 - Fair market value of the goods and services so supplied may be determined in accordance with the generally accepted accounting principles

Services by a tour operator - Entry No. 11

➤ **Position till 31.03.2016:**

Particulars	Taxable Portion	Abatement	Cenvat Availability
Services by a tour operator in relation to –			Not available
(i) A packaged tour	25%	75%	
(ii) A tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to tour	10%	90%	
(iii) Any services other than specified at (i) and (ii) above	40%	60%	

Services by a tour operator - Entry No. 11

➤ **Position on or after 01.04.2016:**

Particulars	Taxable Portion	Abatement	Cenvat Eligibility
Services by a tour operator in relation to –			Not available
(i) A tour only for the purpose of arranging or booking accommodation for any person	10%	90%	
(ii) Tours other than (i) above	30%	70%	

➤ ~~Definition of 'packaged tour' under clause 2(b) of Abatement notification is omitted~~

Construction Services - Entry No. 12

➤ **Position till 31.03.2016:**

Particulars	Taxable Portion	Abatement	Cenvat Availability
Sale of under construction flats/units			Cenvat of input services and capital goods
a) For residential unit satisfying both the following conditions, namely:- (i) Carpet area < 2000 sq ft and (ii) The amount < 1 crore	25%	75%	The value of land to be included in the amount charged from the service recipient
b) Other than (a) above	30%	70%	

Construction Services - Entry No. 12

➤ **Position on or after 01.04.2016:**

Particulars	Taxable Portion	Abatement	Cenvat Availability
Sale of under construction flats / units	30%	70%	Non-availability of Cenvat on Input The value of land to be included in the amount charged from the service receiver

Point of Taxation

- **Effective from 01/03/2016**

Point of Taxation

- Section 67A amended to empower Central Government to make changes in Point of Taxation Rules ('POTR') [w.e.f date of enactment of Finance Bill]
 - Explanations to Rule 5 of POTR are added to clarify as under:
 1. Rule 5 shall also apply to new levy on services
 2. New levy or tax shall be payable on all the cases other than specified in Rule 5
 - This would mean that no tax to be paid if payment is received before such service becomes taxable or new levy is introduced; **and**
 - Invoice is issued before service becomes taxable or new levy is introduced; Or
 - Invoice is issued within 14 days before service becomes taxable or new levy is introduced
- In simple words, if payment for service is not received before introduction of new levy on services, the levy shall apply to such services
- **Implications/Points for consideration:**
 - Proposed amendment in section 67A resolves the conflict, if any, between POTR and section 67A as to the point of time for applicability of rate of tax
 - Explanations to Rule 5 leads to retrospective taxation. Is this in consonance with 'No Retrospective taxation' promise of Union Government?

Amendment in Service Tax Rules, 1994

(w.e.f 01.04.2016)

Change in due date for payment of service tax for specified entities

➤ Payment of service tax

Particulars	Up to 31.03.2016	On or after 01.04.2016
One person Company (OPC)		
Turn over less than 50 lakhs in preceding F.Y	Monthly on accrual basis	Quarterly payment on receipt basis at its option
Turn over more than 50 lakhs in preceding F.Y	Monthly on accrual basis	Monthly on accrual basis
HUF irrespective of turnover	Monthly on accrual basis	Quarterly on accrual basis

- However, for the applicability of Reverse Charge Mechanism, OPC will be treated at body corporate only
- One Person company as defined in Section 2(62) of the Companies Act, 2013

Filing of Annual Return

- Rule 7 (3A) shall be inserted w.e.f 01.04.2016 wherein every assessee is required to submit an annual return for the Financial year by 30th November of Succeeding Financial Year.
- Rule 7 (3B) empowers central government to grant relief for submitting the annual return on fulfillment of certain conditions or for class of assesses
- Assessee will be entitled to file revise annual return within a period of one month from the date of filing of original annual return
- In case of failure to file annual return on or before due date, assessee will be liable to penalty of Rs.100 Per Day for the period of delay in filing of such return Subject to the Maximum of Rs. 20,000/-

[Notification No. 19/2016-ST dated 01.03.2016]

Reverse Charge Mechanism and Service Tax Rules, 1994

- **Notifications Nos. 18/2016-ST dated 01.03.2016 and 19/2016 dated 01.03.2016**
- **With Effect From 01.04.2016 unless specified otherwise**

Reverse Charge Mechanism (RCM) and Corresponding change in Service Tax Rules, 1994 (STR)

Amendments in Notification No. 30/2012-ST dated 20.06.2012 and Rule 2(1)(d) of STR:

Service Provider	Service recipients / Person liable to pay tax under RCM	Nature of service	Person liable to pay tax	Corresponding amendment in Rule 2(1)(d) of STR
Mutual fund agent or distributor	Mutual fund or AMC	Agency or distribution service	Mutual fund agent or distributor w.e.f. 01.04.2016	Rule 2(1)(d)(EEA) defining Mutual fund or AMC as person liable to pay service tax is omitted w.e.f. 01.04.2016
Senior Advocate	Any person other than non-business entity	Legal services	Senior Advocate w.e.f. 01.04.2016	Rule 2(1)(d)(D)(II) is amended to exclude term senior advocates w.e.f 01.04.2016
Foreign Shipping Company	Any person located in Taxable territory other than govt., local authority, govt authority, individual (non-business entity)	Import Freight	Service Recipient	W.e.f 01.06.2016

05.03.2016

N.K. Sheth & Company

64

RCM - Government Services

➤ Position till 31.03.2016

Service Provider	Service recipients	Nature of service	Payable by Service recipient under RCM
Government or local authority	Any business entity	<p>Support services except:</p> <ul style="list-style-type: none"> - Renting of immovable property - Services specified in sub clause <ul style="list-style-type: none"> • Services provided by Department of Post by way of Speed post, express parcel post, life insurance and agency services provided to person other than government ; • Services in relation to an aircraft or a vessel inside and outside the precincts of a port or an airport; and • Transport of goods / passengers 	100% of tax liability upto 31.03.2016

RCM - Government Services

Amendment – Position on or after 01.04.2016

Service Provider	Service recipients	Nature of service	Payable by Service recipient under RCM
Government or local authority	Any business entity	<p>ANY services except:</p> <ul style="list-style-type: none"> - Renting of immovable property - Services specified in sub clause <ul style="list-style-type: none"> • Services provided by Department of Post by way of Speed post, express parcel post, life insurance and agency services provided to person other than government ; • Services in relation to an aircraft or a vessel inside and outside the precincts of a port or an airport; and • Transport of goods / passengers 	100% of tax liability w.e.f. 01.04.2016

Penalties and Offences

- w.e.f. the date of enactment of Finance Bill, 2016

Penalties and Offences

➤ **Previous Position:**

- The monetary limit for filing complaints for punishable offences u/s 89 of the Act was Rs. 50 lakhs
- The threshold limit for power to arrest and cognizance of offences like tax payer has collected the tax but not deposited with the exchequer u/s 90 and 91 were Rs. 50 lakhs

➤ **Amended Position:**

- The Monetary limit for filing complaints for punishable offences u/s 89 of the Act is proposed to be enhanced to Rs. 2 Crores
- Power to arrest in service tax law is proposed to be restricted only to situations where the tax payer has collected the tax but not deposited it with the exchequer, and amount of such tax collected but not paid is above Rs.2 Crores or more
- If main demand and penalty proceedings u/s 76 and 78 have been closed then the penalty proceedings u/s 78A of the Act on directors, managers , secretary or other officer of the company etc. of the company shall be deemed to be closed

Interest On Delayed Payments

(w.e.f date of Enactment of Finance Bill, 2016)

Rationalization of Interest On Delayed Payments

- Notification no. 13/2016 – ST dated 01.03.2016 has rationalized interest rate as under w.e.f date of enactment of Finance Bill :

Delay	Pre-amendment		Post amendment	
	Turnover > 60 L in preceding FY	Turnover < 60 L in preceding FY	Turnover > 60 L in preceding FY	Turnover < 60 L in preceding FY
Up to 6 months	18%	15%	<ul style="list-style-type: none"> • Service tax collected but not deposited: 24% • Any other case: 15% 	<ul style="list-style-type: none"> • Service tax collected but not deposited: 21% • Any other case: 12%
6 months to 1 year	24%	21%		
More than 1 year	30%	27%		

Rationalization of Interest On Delayed Payments

- Implications/ Points to be noted:
 - Interest rate on refunds is not changed
 - Administrative issue would arise as to computation of interest as under:

If actual realization is the date of collection of tax

Date of invoice	Date of receipt of consideration	Due date	Payment of ST	Issue
01.05.2016	30.06.2016	06.06.2016	30.09.2016	Whether interest is to be discharged at <ul style="list-style-type: none">• 15% from 06.06.2016 to 30.06.2016• at 24% from 01.07.2016 to 30.09.2016

**Normal period of limitation
(w.e.f 01.03.2016)**

Normal period of limitation

- Section 73 of the Act is amended to increase the limitation period for recovery of service tax not levied or paid or short-levied or short paid or erroneously refunded, for cases not involving fraud, collusion, suppression etc. from 18 months to 30 months **w.e.f date of enactment of Finance Bill, 2016.**
- It is to be noted that extended period of limitation in cases involving fraud is not changed i.e. Department

Indirect tax Dispute Resolution Scheme, 2016

- Effective from 01/06/2016

Indirect tax Dispute Resolution Scheme, 2016

- A scheme namely Indirect tax Dispute Resolution Scheme, 2016, is proposed to be introduced vide insertion of Chapter XI in the Finance Act, 1994
- The declarant has to file a declaration with designated authority on or before 31st December, 2016 to avail benefit of this scheme
- The designated authority would mean an officer not below the rank of Assistant Commissioner who is authorized to act as such by the Commissioner for the purpose of this scheme
- This scheme will not apply to pending appeals in respect of:
 - Impugned order in respect of search and seizure proceedings;
 - Prosecution for any offence which has been instituted before the 01.06.2016;
 - Impugned order in respect of Narcotic drugs or other prohibited goods;
 - Impugned order in respect of any offence punishable under Indian Penal Code or Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or
 - Detention order under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

Indirect tax Dispute Resolution Scheme, 2016

- Under the proposed scheme, cases pending before Commissioner (Appeals) shall be deemed to be concluded on payment of duty (tax), interest and penalty equivalent to 25% of duty (tax) and the declarant shall get immunity from all proceedings under the Act in respect of Indirect Tax Dispute for which declaration is made under this scheme
- Any amount paid under this Scheme will not be refundable
- On passing of order by designated authority under this Scheme, the appeal pending before Commissioner (Appeals) stand disposed of and declarant will get immunity from all the proceedings under the Act in respect of the tax dispute for which declaration is made under this scheme
- No matter relating to such order can be reopened in any proceedings under the Act before any authority or Court
- One fails to understand the Clause 214(2) of Finance Bill, 2016 which provides that order passed by designated authority under this scheme shall not be deemed to be an

Words of Caution

- Views expressed are the personal views of faculty based on his interpretation of law.
- Application of various provisions and its implications will vary on facts of the case and law prevailing on relevant time.
- This educational meeting is arranged with a clear understanding that neither Faculty nor Study Circle will be responsible for any error, omission, commission and result of any action taken by a member or anyone on the basis of this presentation.
- Participants are advised to take cognizance of above while applying the contents of this presentation to specific case / issue.



05.03.2016

N.K. Sheth & Company

78