

**F. No. 334/8/2016-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
(Tax Research Unit)**

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**D.O.F. No.334/8/2016-TRU  
New Delhi, dated February 29<sup>th</sup>, 2016**

**Dear Madam/Sir,**

**Subject: Union Budget 2016 - Changes relating to Service Tax - reg.**

The Finance Minister has, while presenting the Union Budget 2016-17, introduced the Finance Bill, 2016 in the Lok Sabha on the 29<sup>th</sup> of February, 2016. Clauses 145 to 157 of the Bill cover the amendments made to Chapter V of the Finance Act, 1994. Chapter VI of the Bill (clause 158) proposes to levy Krishi Kalyan Cess, on any or all the taxable services at the rate of 0.5% of the value of taxable services with effect from 1<sup>st</sup> June, 2016.

2.0 Changes are also proposed in,-

- the Service Tax Rules, 1994 (STR);
- the Point of Taxation rules, 2011;
- the CENVAT Credit Rules, 2004(Cenvat Rules);

These and other changes are being given effect to by inserting new entries, and amending/omitting existing entries in notification Nos. 25/2012-ST, 26/2012-ST, 30/2012-ST, 32/2012-ST, all dated 20-6-2012, 23/2004-CE(NT) dated 10.09.2004 and 27/2012-C.E. (N.T.) dated 18.06.2012 and by issuing new notifications.

2.1 It may be noted that changes being made in the Budget are coming into effect on various dates, as indicated below:

- (i) Changes coming into effect immediately w.e.f. the 1<sup>st</sup> day of March, 2016;
- (ii) Changes coming into effect from the 1<sup>st</sup> day of April, 2016;
- (iii) The amendments which will get incorporated in the Finance Act, 1994 on enactment of the Finance Bill, 2016;
- (iv) The amendments made in the Finance Act, 1994, which will come into effect from 1<sup>st</sup> day of June, 2016 after the enactment of the Finance Bill, 2016; and
- (v) Chapter VI of the Finance Bill, 2016, regarding levy of Krishi Kalyan Cess on all taxable services will come into effect from 1<sup>st</sup> June 2016.

For ease of reference, the Table at Annexure-I lists the changes being made and indicates the dates on which these changes would come into effect.

**The salient features of the changes being made are discussed below.**

### **3.0 Enabling provision for levy of “Krishi Kalyan Cess”:**

3.1 Krishi Kalyan Cess is proposed to be levied with effect from 1<sup>st</sup> June, 2016 on any or all the taxable services at the rate of 0.5% on the value of such taxable services. Credit of Krishi Kalyan Cess paid on input services shall be allowed to be used for payment of the proposed Cess on the service provided by a service provider.

*(Chapter VI/Clause 158 of the Bill refers)*

### **4.0 Other Legislative changes:**

4.1 **Negative List** -The changes proposed in the Negative List in Section 66 D are as follows:

- (A) Presently, clause (l) of section 66D of the Act [Negative List] covers specified educational services. These services are proposed to be omitted from the Negative List but the service tax exemption on them is being continued by incorporating them in the general exemption notification (*Notification No. 25/2012-ST as amended by notification No. 09/2016-ST, dated 1<sup>st</sup> March, 2016 refers*). Consequently, the

definition of ‘approved vocational education course’ [clause (11) of section 65B] is also proposed to be omitted from the Finance Act and is being incorporated in the general exemption notification (*Notification No. 25/2012-ST as amended by notification No 09/2016-ST, dated 1<sup>st</sup> March, 2016 refers*). This amendment in the notification shall come into effect from the date of enactment of Finance Bill, 2016.

- (B) The Negative List entry that covers “service of transportation of passengers, with or without accompanied belongings, by a stage carriage” is proposed to be omitted [section 66D (o)(i)] with effect from 1.06.2016. Clause 146 of Finance Bill 2016 may please be seen. As a consequence, the above services become taxable with effect from 1.06.2016. However, such services by a non-air-conditioned contract carriage will continue to be exempted by way of exemption notification [*Notification No. 25/2012-ST, as amended by notification No. 09/2016-ST, dated 1st March, 2016 refers*]. The service of transportation of passengers by air-conditioned stage carriage is being taxed at the same level of abatement (60%) as applicable to the transportation of passengers by a contract carriage, with same conditions of non-availment of Cenvat credit. [*notification No. 08/2016-St dated 29<sup>th</sup> February, 2016 refers*]
- (C) The entry in the Negative List that covers services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance [section 66D (p)(ii)] is proposed to be omitted with effect from 1.06.2016. Clause 146 of Finance Bill 2016 may please be seen in this regard. However such services by an aircraft will continue to be exempted by way of exemption notification [*Not. No. 25/2012-ST, as amended by notification No. 09/2016-ST dated 1<sup>st</sup> March, 2016 refers*]. The domestic shipping lines registered in India will pay service tax under forward charge while the services availed from foreign shipping line by a business entity located in India will get taxed under reverse

charge at the hands of the business entity. The service tax so paid will be available as credit with the Indian manufacturer or service provider availing such services (subject to fulfillment of the other existing conditions). It is clarified that service tax levied on such services shall not be part of value for custom duty purposes.

In addition, Cenvat credit of eligible inputs, capital goods and input services is being allowed for providing the service by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India. Consequential amendments are being made in Cenvat Credit Rules, 2004 [Not. No. 23/2004-CE (N.T.), as amended by Sl. Nos. 2(b) and 5(h) of notification No. 13/2016-C.E. (N.T.) dated refers. ]

*(Clause 146 of the Bill refers)*

#### **4.2 Further amendments in Chapter V of the Finance Act, 1994:**

##### **A. Lottery:**

Section 4(c) of the Lotteries (Regulation) Act, 1998 provides that the State Government shall sell the tickets either itself or through distributors or selling agents. Thus, as per the provisions of the Lotteries (Regulation) Act, 1998, the transaction between the State Government and the distributors or selling agents is on principal to agent basis. Any contract contrary to the aforesaid legal provisions is *ultra vires* the provisions of Indian Contracts Act, 1872 and thus not legally enforceable. *Explanation 2* in section 65B(44) is proposed to be amended to clarify that activity carried out by a lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998), is leviable to service tax.’

*(Clauses 145 of the Bill refers)*

##### **B. Declared Services (Section 66E):**

Assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof is proposed to be declared as a service under section 66E of the Finance Act, 1994 so as to make it clear that assignment by Government of the right to use the spectrum as well as

subsequent transfers of assignment of such right to use is a service leviable to service tax and not sale of intangible goods.

*(Clauses 147 of the Bill refers)*

**C. Section 67A of Finance Act, 1994.**

Section 67A is proposed to be amended to obtain specific rule making powers in respect of Point of Taxation Rules, 2011. Point of Taxation Rules, 2011 is being amended accordingly. The amendment in the rules would come into force with effect from the date of enactment of the Finance Bill, 2016.

*(Clause 148 of Finance Bill, 2016 and Sl. No. 2(1) of notification No. 10/2016-ST refers)*

**D. Amendment in section 73 of the Finance Act:**

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. is proposed to be enhanced by one year, that is, from eighteen months to thirty months by making suitable changes to section 73 of the Finance Act, 1994.

*(Clauses 149 of the Finance Bill, 2016 refers)*

**E. Amendment to section 75 of Finance Act**

Section 75 of the Finance Act is proposed to be amended so that a higher rate of interest would apply to a person who has collected the amount of service tax from the service recipient but not deposited the same with the Central Government.

*(Clause 150 of Finance Bill 2016 refers)*

**F. Amendment in section 78A of the Finance Act, 1994**

It is proposed to provide that penalty proceedings under section 78A shall be deemed to be closed in cases where the main demand and penalty proceedings have been closed under section 76 or section 78, by making suitable changes to section 78A by addition of an explanation.

*(Clause 151 of Finance Bill 2016 refers)*

**G. Section 89 of the Finance Act, 1994**

The monetary limit for filing complaints for punishable offences is proposed to be enhanced to Rs. 2 crore.

*(Clause 152 of Finance Bill 2016 refers)*

**H. Sections 90 and 91 of the Finance Act, 1994**

The 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 the threshold of Rs 2 crore. Sections 90 and 91 of the Finance Act, 1994 are being amended accordingly.

*(Clauses 153 and 154 of Finance Bill 2016 refers)*

**I. Section 93A: Power to grant rebate.**

Section 93A of the Finance Act,1994 is being amended so as to enable allowing of rebate by way of notification as well as rules.

*(Clause 155 of the Bill refers)*

**J. Retrospective effect to notification No. 01/2016- ST**

Notification No. 41/2012- ST, dated the 29th June, 2012 was amended vide notification No.1/2016-ST dated 3rd February, 2016 so as to, *inter alia*, allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods. The said amendment is being given retrospective effect from the date of application of the parent notification, i.e., from 01.07.2012. Time period of one month is proposed to be allowed to the exporters whose claims of refund were earlier rejected in absence of amendment carried out vide notification No.1/2016-ST dated 3rd February, 2016.

*(Clauses 157 of the Bill refers)*

**K. Service Tax exemption to canal, dam or other irrigation works with retrospective effect:**

- (a) Definition of Governmental authority was amended with effect from 30.01.2014 so as to exempt services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature. However, services provided prior to 30.01.2014 to such bodies remained taxable. The benefit of exemption is proposed to be extended to the said services provided during the period from the 1<sup>st</sup> July, 2012 to 29.01.2014.
- (b) Refund of Service Tax paid on the said services during the period from the 1st July, 2012 to 29.01.2014 shall also be allowed in accordance with the law including the law of unjust enrichment. Application for refund may be allowed to be filed within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

*[New section 101 is being inserted in the Finance Act, 1994]  
(Clauses 156 of the Finance Bill, 2016 refers)*

**L. Restoration of certain exemptions withdrawn last year for projects, contracts in respect of which were entered into before withdrawal of the exemption.**

- (a) Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of -
  - (i) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
  - (ii) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
  - (iii) 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 65B of the said Act;

was withdrawn with effect from 1.4.2015. The same is being restored for the services provided under a contract which had been entered into

prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The exemption is being restored till 31.03.2020. [Notification No. 25/2012-ST as amended by notification No. 09/2016-ST dated 1<sup>st</sup> March, 2016 refers] The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from service tax.

*[New section 102 is being inserted in the Finance Act, 1994]  
(Clauses 156 of the Bill refers)*

- (b) Exemption from Service Tax on services by way of construction, erection, etc. of original works pertaining to an airport, port was withdrawn with effect from 1.4.2015. The same is being restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, that the contract had been entered into prior to 01.03.2015. The exemption is being restored till 31.03.2020. [Notification No. 25/2012-ST as amended by notification No. 09/2016-ST dated 1<sup>st</sup> March, 2016 refers]. The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from service tax.

*[New section 103 is being inserted in the Finance Act, 1994]  
(Clauses 156 of the Bill refers)*

The above changes in the Finance Act, 1994 shall come into force on the day the Finance Bill, 2016 is enacted.

## **5.0 Information Technology Software:**

- 5.1 With effect from 21.12.2010, media falling under Chapter 85 with recorded Information Technology Software has been notified under section 4A of the Central Excise Act. Accordingly, Central Excise duty/CVD is to be paid on the value of such media with recorded Information Technology Software and the assessable value of such media is required to be determined on the basis of the retail sale price (RSP) affixed on the package of such media



under the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder. In respect of transactions involving supply of such media bearing RSP, not amounting to sale/deemed sale, service tax is being exempted. Thus, only Central Excise duty is levied on such transactions. *(Notification No. 11/2016-CE dated 1<sup>st</sup> March 2016 refers)*

5.2 In certain situations like delivering customised software on media, such media with recorded Information Technology Software, is not required to bear the RSP when supplied domestically or imported. Difficulties are being experienced in the assessment of such media to Central Excise duty/CVD besides giving rise to the issue of double taxation – levy of Central Excise duty/CVD as well as service tax. In order to resolve the issue, media with recorded Information Technology Software which is not required to bear RSP, is being exempted from so much of the Central Excise duty/CVD as is equivalent to the duty payable on the portion of the value of such Information Technology Software recorded on the said media, which is leviable to service tax. In such cases, manufacturer/importer would therefore be required to pay Central Excise duty/CVD only on that portion of value representing the value of the medium on which it is recorded along with freight and insurance. The exemption is subject to the fulfillment of certain conditions. Thus, the levy of Central Excise duty/CVD and service tax will be mutually exclusive. *(Notification No. 11/2016-CE and 11/2016-Customs, both dated 1<sup>st</sup> March 2016 refers)*

## **6.0 Review of Exemptions:**

6.1 Exemption in respect of the following services is being withdrawn,-

- Services provided by a senior advocate to an advocate or partnership firm of advocates, and
- A person represented on an arbitral tribunal to an arbitral tribunal;

Service tax in the above instances would be levied under forward charge. However, the existing dispensation regarding legal services provided by a firm of advocates or an advocate other than senior advocate is being continued.

*(Sl. No. (i) of Notification No. 9/2016-ST, dated 1st March, 2016 refers).*

- 6.2 Exemption under Sl. No. 23 (c) of the notification No.25/2012-ST on transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway is being withdrawn.

*( Sl. No (ix) B of notification No. 9/2016-ST, dated 1st March, 2016 refers).*

- 6.3 Exemption to construction, erection, commissioning or installation of original works pertaining to monorail or metro (under S. No 14 of the notification No. 25/12-ST) is being withdrawn, in respect of contracts entered into on or after 1<sup>st</sup> March 2016. The other exemptions under S. No. 14 of notification No. 25/12-ST shall continue unchanged.

*( Sl. No(vi)A of notification No. 9/2016-ST, dated 1st March, 2016 refers).*

The above changes in notification No. 25/12-ST, except the change mentioned in para 6.3, shall come into effect from the 1<sup>st</sup> day of April 2016. The change mentioned in para 6.3 will come into effect from 1<sup>st</sup> March, 2016.

## **7. New Exemptions:**

- 7.1 The services of life insurance business provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India is being exempted from service tax.

*(New entry at S. No. 26C of notification No. 25/2012-ST refers)*

- 7.2 Services provided by Securities and Exchange Board of India (SEBI) set up under SEBI Act, 1992, by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market are being exempted from service tax.

*(New entry at S. No. 51 of notification No. 25/2012-ST refers)*

- 7.3 Services provided by Employees' Provident Fund Organisation (EPFO) to employees are being exempted from service tax.

*(New entry at S. No. 49 of notification No. 25/2012-ST refers)*

- 7.4 Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubatees are being exempted from service tax.  
*(Amendment in notification No. 32/2012-ST refers)*
- 7.5 Services provided by National Centre for Cold Chain Development under Department of Agriculture, Cooperation and Farmer's Welfare, Government of India, by way of knowledge dissemination are being exempted from service tax.  
*(New entry at S. No. 52 of notification No. 25/2012-ST refers)*
- 7.6 Services provided by Insurance Regulatory and Development Authority (IRDA) of India are being exempted from service tax.  
*(New entry at S. No. 50 of notification No. 25/2012-ST refers)*
- 7.7 Services of general insurance business provided under 'Niramaya' Health Insurance scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability in collaboration with private/public insurance companies are being exempted from service tax.  
*(New entry at S. No. 26(q) of notification No. 25/2012-ST refers)*
- 7.8 The threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art forms of music, dance or theatre, is being increased from Rs 1 lakh to Rs 1.5 lakh per performance.  
*( Notification No.09/2016-ST, dated 1<sup>st</sup> March 2016 refers)*
- 7.9 Services provided by way of skill/vocational training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners are being exempted from service tax.  
*(New entry at S. No. 9D of notification No. 25/2012-ST refers)*
- 7.10 Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship are being exempted from service tax.

*(New entry at S. No. 9C of notification No. 25/2012-ST refers)*

- 7.11 Services by way of construction, erection etc. of a civil structure or any other original works pertaining to the “In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation” component of Housing for All (HFA) (Urban) Mission / Pradhan Mantri Awas Yojana (PMAY), except in respect of such dwelling units of the projects which are not constructed for existing slum dwellers, is being exempted from service tax.

*(New entry at S. No. 13 (ba) of notification No. 25/2012-ST refers)*

- 7.12 Services by way of construction, erection etc., of a civil structure or any other original works pertaining to the “Beneficiary-led individual house construction / enhancement” component of Housing for All (HFA) (Urban) Mission/ Pradhan Mantri Awas Yojana (PMAY) is being exempted from service tax.

*(New entry at S. No. 13 (bb) of notification No. 25/2012-ST refers)*

- 7.13 Services by way of construction, erection, etc., 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 the “Affordable housing in partnership” component of PMAY or any housing scheme of a State Government are being exempted from service tax.

*(new entry at S. No. 14 (ca) of notification No. 25/2012-ST refers)*

- 7.14 Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Management(PGPM) (other than executive development programme), admissions to which are made through Common Admission Test conducted by IIMs, 5 year Integrated Programme in Management and Fellowship Programme in Management are being exempted from service tax.

- 7.15 It has been informed by Secretary, Ministry of Human Resource Development (MHRD) vide letter D. O. No.2-14/2009-TS.V dated 8<sup>th</sup> July, 2014 and 5<sup>th</sup> February, 2014 that MHRD is vested with the power to

recognise educational courses [DoPT O.M. dated 08.01.1975], for the purpose of recruitment to posts under Government of India. It has been further stated by MHRD in their above mentioned letters that IIMs have been conducting Post Graduate Programmes in Management and Fellowship Programmes which are equivalent to MBA and Ph.D degrees. It has been reiterated by Secretary, MHRD vide letter D.O. 3/5/2013-TS.V dated 15.1.2016 that the IIMs have been conducting Post Graduate Programmes in Management and Fellowship Programmes which are equivalent to MBA and Ph.D degrees, respectively, (as also clarified by associations like Association of Indian Universities, Inter –University Board of India etc.). In view of this, the exemption being given to the above programmes of IIMs is clarificatory in nature and in view of the same, liability to pay service tax in respect of the said programmes for the past period will also become infructuous.

(New entry at S. No. 9B of notification No. 25/2012-ST *refers*)

The above changes in notification No. 25/12-ST, except the change mentioned in para 7.11, 7.12, 7.13 and 7.14 (which will come into effect from 1<sup>st</sup> March, 2016), shall come into effect from the 1<sup>st</sup> day of April 2016.

**8. New entries being incorporated in notification No. 25/2012-ST, to continue exemption to certain activities that are presently covered by the Negative List entries which are being omitted:**

8.1 Services by way of transportation of goods by an aircraft from a place outside India up to the customs station of clearance in India were in negative list of services [clause (p)(ii) of section 66D]. As this entry is proposed to be omitted through the Finance Bill 2016[para 4.1(C) above refers], the said service is being exempted by amending notification No.25/2012-ST.

(*New entry at S. No 53 of notification No. 25/2012-ST refers*)

8.2 Services by a stage carriage were in the negative list of services [clause (o) (i) of section 66D]. As this entry is proposed to be omitted through the Finance Bill 2016 [para 4.2 above refers], a new entry is being inserted in

notification No.25/2012-ST so as to exempt services by a stage carriage other than air conditioned stage carriage

*(New entry at S. No. 23(bb) of notification No. 25/2012-ST refers)*

These changes shall be made effective from 1<sup>st</sup> of June, 2016.

**9. Abatements:**

9.1 In cases where the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour, abatement of 90% is available with specified conditions. However, this abatement of 90% cannot be claimed in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation. There is no change in the rate of abatement or the conditions required to be fulfilled for claiming the said abatement.

*(Entry at S. No. 11(i) of notification No. 26/2012-ST as amended vide notification No. 8/2016-ST dated 1.03.2016 refers)*

9.2 Abatement rates in respect of services by a tour operator in relation to a tour other than in para 9.1 above, is being rationalised from 75% and 60% to 70%. Consequently, the definition of “package tour” as provided in the relevant notification is being omitted.

*(Amendment in entry at S. No. 11 of notification No. 26/2012-ST refers)*

9.3 Services provided by foreman to a chit fund under the Chit Funds Act, 1982 are proposed to be taxed at an abated value of 70% [i.e., with abatement of 30%], subject to the condition that Cenvat credit of inputs, input services and capital goods has not been availed.

*(Amendment in entry at S. No. 8 of notification No. 26/2012-ST refers)*

9.4 At present, there is abatement of 60% on the gross value of renting of motor-cab services, provided no cenvat credit has been taken. It is being made clear by way of inserting an explanation in the notification No. 26/2012-ST that cost of fuel should be included in the consideration charged for providing renting of motor-cab services for availing the abatement.

*(Insertion of Explanation ‘BA’ in notification No. 26/2012-ST refers)*

9.5 At present, two rates of abatement have been prescribed for services of construction of complex, building, civil structure, or a part thereof,- (a) 75% of the amount charged in case of a residential unit having carpet area of less than 2000 square feet and costing less than Rs 1 crore, and (b) 70% of the amount charged in case of other than (a) above, both subject to fulfilment of certain conditions prescribed therein. A uniform abatement at the rate of 70% is now being prescribed for services of construction of complex, building, civil structure, or a part thereof, subject to fulfilment of the existing conditions.

*(Amendment in entry at S. No. 12 of notification No. 26/2012-ST refers)*

9.6 At present, service tax is leviable on 30% of the amount charged for the service of transport of passengers by rail, without cenvat credit of inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of the said services. It is proposed to continue with the same level of abatement with cenvat credit of input services for the said service.

*(Amendment in entry at S. No. 3 of notification No. 26/2012-ST refers)*

9.7 At present, service tax is payable on 30% of the value of service of transport of goods by rail without cenvat credit on inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of the said service. It is now proposed to continue with the same level of abatement with cenvat credit of input services for transport of goods by rail (other than “transport of goods in containers by rail by any person other than Indian Railway”). A reduced abatement rate of 60% with credit of input services is being prescribed for transport of goods in containers by rail by any person other than Indian Railway.

*(Existing entry at S.No. 2 and new entry at S. No. 2A of notification No. 26/2012-ST refers)*

9.8 At present, service tax is leviable on 30% of the value of service of transport of goods by vessel without Cenvat credit on inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of

the said service. It is now proposed to continue with the same level of abatement with cenvat credit of input services for the said service.

*(Amendment in entry at S. No. 10 of notification No. 26/2012-ST refers)*

- 9.9 Abatement on transport of used household goods by a Goods Transport Agency (GTA) is being rationalised at the rate of 60% without availment of cenvat credit on inputs, input services and capital goods by the service provider (as against abatement of 70% allowed on transport of other goods by GTA).

*(New entry at S. No. 7A in notification No. 26/2012-ST refers)*

The proposed rationalization in abatements shall come into effect from the 1<sup>st</sup> day of April, 2016.

## **10. Reverse Charge Mechanism**

- 10.1 In Union Budget, 2015, as a policy decision to prune exemptions, the exemption to services provided by mutual fund agents/distributors to an asset management company was withdrawn. However these services were put under reverse charge liability, i.e., the Asset Management Company was made liable to pay service tax for the services received from such agents/distributors. Services provided by mutual fund agents/distributor to a mutual fund or asset management company are being put under forward charge, i.e. the service provider is being made liable to pay service tax. The small sub-agents down the distribution chain will still be eligible for small service provider exemption [threshold turnover of Rs 10 lakh/year] and a very small number will be liable to pay service tax. Accordingly, Rule 2(1)(d)(EEA) of Service Tax Rules, 1994 making service recipient, that is, mutual fund or Asset Management Company as the person liable for paying service tax is being deleted along with consequential changes in notification No. 30/2012-ST.

- 10.2 The liability to pay service tax on any service provided by Government or a local authority to business entities shall be on the service recipient.



Consequently, notification No. 30/2012-ST is being amended so as to delete the words ‘*by way of support services*’ appearing at Sl. No. 6 of the Table in the said notification with effect from 1<sup>st</sup> April, 2016. Further, 1<sup>st</sup> April, 2016 is being notified as the date from which the words ‘*by way of support services*’ shall stand deleted from paragraph 1, clause A (iv), item (C) of notification No. 30/2012-ST.

The above changes shall come into effect from the 1<sup>st</sup> day of April 2016.

## **11. Service Tax Rules**

- 11.1 The concept of One Person Company (OPC) in India was introduced through the Companies Act, 2013 to support entrepreneurs who on their own are capable of starting a venture by allowing them to create a single person economic entity with limited liability. One person Company has been defined in Section 2(62) of the Companies Act, 2013. The benefits of (a) quarterly payment of service tax and (b) payment of service tax on receipt basis, which are available to individual and partnership firms, are being extended to One Person Company (OPC) whose aggregate value of services provided is up to Rs. 50 lakh in the previous financial year. Further, the benefit of quarterly payment of service tax is also being extended to HUF. Rule 6 of the Service tax Rules, 1994, which deals with the payment of service tax and prescribes relaxation for individual or proprietary firm or partnership firm, is being amended accordingly.
- 11.2 Rule 2(1)(d)(i) (D)(II) is being modified so that legal services provided by a senior advocate shall be on forward charge.  
*(Notification No. 19/2016-ST dated 1.03.2016 refers)*
- 11.3 The service tax liability on single premium annuity (insurance) policies is being rationalised and the effective alternate service tax rate (composition rate) is being prescribed at 1.4% of the total premium charged, in cases where the amount allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of

service. Amendments are being made in rule 7A of Service Tax Rules, 1994 accordingly.

- 11.4 At present, support services provided by Government or local authorities to business entities are taxable under reverse charge mechanism that is the liability to pay service tax on such services is on the service recipient. With effect from 1st April, 2016, any service (and not only support services) provided by Government or local authorities to business entities shall be taxable. Consequently, 1<sup>st</sup> April, 2016 is being notified as the date from which the word “support” shall stand deleted from rule 2(1)(d)(i) (E) of Service Tax Rules, 1994 so as to provide that the liability to pay service tax on any service provided by Government or local authorities to business entities shall also be on the service recipient on reverse charge basis.
- 11.5 Recipient of services availed from foreign shipping line by a business entity located in India will get taxed under reverse charge at the hands of the business entity. (No fresh provision is being made in this regard, as it is already covered by Place of Provision of Service Rules.)
- 11.6 **Technical amendment to rule 6 (4)**  
Rule 6(4) is being amended so as to substitute the reference to the Central Excise (No. 2) Rules, 2001, with a reference to the Central Excise Rules, 2002.

The above changes, except the changes mentioned in para 11.5 (which will come into effect from 1<sup>st</sup> June, 2016), shall come into effect from the 1<sup>st</sup> day of April 2016.

## **12. The Point of Taxation Rules (POTR).**

The Point of Taxation Rules, 2011 have been framed under provisions of clause (a) and (hhh) of sub-section (1) of section 94, now specific powers is also being obtained under section 67A to make rules regarding point in time of rate of service tax. Thus, any doubt about the applicability of service tax

rate or apparent contradiction between section 67A and POTR would be taken care of. Therefore, consequent modifications have been done in POTR.

- (a) Rule 5 of POTR applies when a new service comes into the service tax net. Although in the case of new levy, provisions of Chapter V of the Finance Act, 1994, and rules made thereunder, are invariably made applicable in relation to the levy and collection of the new levy. However, doubts have been raised regarding its applicability in case of new levy. Therefore, an *Explanation* is being inserted in Rule 5 stating that the same is applicable in case of new levy on services.
- (b) Further, in rule 5 of POTR, it is provided that in two specified situations the new levy would not apply. Another *Explanation* is being inserted therein stating that in situations other than those specified where new levy or tax is not payable, the new levy or tax shall be payable.

The above changes shall come into effect from 1<sup>st</sup> March, 2016.

### **13. Cenvat Credit Rules, 2004**

With a view to simplify and rationalize the Cenvat Credit Rules, 2004, a number of amendments are being carried out in them. The important changes have been discussed in brief in Annexure-II.

### **14. Rationalisation**

Interest rates on delayed payment of duty/tax across all indirect taxes is proposed to be made uniform at 15%, except in case of service tax collected but not deposited with the Central Government, in which case the rate of interest will be 24% from the date on which the service tax payment became due. Notifications under section 73B and section 75 of the Finance Act, 1994 are being issued accordingly.

*(Notification Nos. 13 and 14/2016-ST dated 1<sup>st</sup> March, 2016 refer)*

In case of assesseees, whose value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakh, the rate of interest on delayed payment of service tax will be 12%.

*(Notification Nos. 13 and 14/2016-ST dated 1<sup>st</sup> March, 2016 refer)*

## **15. Certain issues clarified:**

### **15.1 Incentives received by air travel agents from computer reservation system companies (CCRS)**

15.1.1 High Level Committee (HLC) in their Second Half Yearly Report in December 2015 have stated that Air Travel Agents (ATA) reportedly have been representing to CBEC since 2012 for a clarification about levy of service tax on the incentives received by them from the Companies providing Computer Reservation System (CCRS) like Galileo, Amadeus, etc. The CCRS do not charge any amount for providing access to their internet system for booking of air tickets by the ATAs. Rather, the CCRS are providing certain incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system.

15.1.2 It is clarified that incentives received by the Air Travel Agents (ATAs) from the Companies providing Computer Reservation System (CCRS) are for using the software and platform provided by the CCRS like Galileo, Amadeus, etc. The CCRS are providing these incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system. Thus, the service provided by CCRS is to the Airlines and Air Travel Agent is promoting the service provided by CCRS to Airlines. Thus, the service provided by the ATAs to CCRS is neither covered in the negative list (Section 66D of the Finance Act, 1994) nor exempt by a notification. Therefore, service tax is leviable on the same.

### **15.2 Services provided by government or local authorities to business entities;**

Finance Act, 1994 was amended vide Finance Act, 2015 so as to make any service (and not only support services) provided by Government or local

authorities to business entities taxable from a date to be notified later. 1st April, 2016 has already been notified as the date from which any service provided by Government or local authorities to business entities shall be taxable. Consequently, 1<sup>st</sup> April, 2016 is also being notified as the date from which the definition of support services shall stand deleted from the Finance Act, 1994

*[notification No. 15/2016-ST dated refers].*

### **15.3 Services provided by Container Train Operators (CTOs)**

As discussed above, notification No. 26/2012-ST is being amended to provide that transport of goods by rail (other than transport of goods in containers by any person other than Indian Railway) shall be eligible for abatement at the rate of 70% with credit of input services. Transport of goods in containers by any person other than Indian Railway shall be eligible for abatement at the rate of 60% with credit of input services.

It is hereby also clarified that service provided by the Indian Railways to Container Train Operators (CTOs) of haulage of their container train (rake of wagons with containers) is a service of 'Transport of Goods by Rail' and is, therefore, eligible for abatement and tax treatment accordingly, that is, for abatement at the rate of 70% with credit of input services.

### **15.4 Refund of CENVAT Credit**

Notification No. 27/2012 – C.E. (N.T.) is being amended so as to provide that time limit for filing application for refund of Cenvat Credit under Rule 5 of the Cenvat Credit Rules, 2004, in case of export of services, shall be 1 year from the date of –

- (a) receipt of payment in convertible foreign exchange, where provision of service has been completed prior to receipt of such payment; or
- (b) the date of issue of invoice, where payment for the service has been received in advance prior to the date of issue of the invoice.

*[Notification No. 14/2016-CE(NT) dated 01.03.2016 refers].*

## **15.5 Indirect tax Dispute Resolution Scheme, 2016**

Indirect tax Dispute Resolution Scheme, 2016, wherein a scheme in respect of cases pending before Commissioner (Appeals), the assessee, after paying the duty, interest and penalty equivalent to 25% of duty, can file a declaration, is being introduced. In such cases the proceedings against the assessee will be closed and he will also get immunity from prosecution. However, this scheme will not apply in certain specified type of cases.

## **15.6 Returns.**

Service tax assessee above a certain threshold will also be required to file an annual return. This change shall come into effect from 1<sup>st</sup> April, 2016.

## **15.7 Services provided by institutes of language management (ILMs)**

15.7.1 High Level Committee (HLC) on Tax Laws in its IInd Half Yearly Report has observed that Institutes of Language Management (ILMs) are engaged by various schools/institutions to develop knowledge and language skills of students. Since the ILMs are providing coaching/teaching to the students in a school or college, as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force it should be clarified that the services provided by ILMs are not liable to service tax.

15.7.2 The matter has been examined. The services provided by the ILMs are not covered by Section 66D (1) of the Finance Act, 1994 or Entry 9 of Notification No. 25/2012 - ST as they are not providing pre-school education or education up to higher secondary school (or equivalent) or education for obtaining a qualification recognized by law. It is the schools/colleges/institutions (in which the students take admissions) which provide such education. The ILMs provides services to such educational institutions, which helps such educational institutions in providing services specified in the negative list. Thus, it is clarified that services provided by

the Institutes of Language Management (ILMs) are not eligible for exemption under Section 66D (1) of the Finance Act, 1994 or under Sl. No. 9 of Notification No. 25/2012-ST.

## **16. General**

- 16.1 Changes explained above are not intended to be exhaustive and are meant only to draw attention to major changes. The text of the statutory provisions and the wordings of the notifications should be read carefully for interpreting the law.
- 16.2 Field formations are requested to go through the changes made in the Budget carefully. Any issues or doubts which may arise or any omission/error observed may kindly be brought to the notice of the undersigned or Shri Ram Tirath, Member(Budget), Phone No. 011-23094788, Dr. Somesh Chander, Director at [somesh.chander@nic.in](mailto:somesh.chander@nic.in), Ph. 011-23095522, or Shri Pramod Kumar, OSD (TRU) at [pramodkumar.dor@nic.in](mailto:pramodkumar.dor@nic.in), Ph. 011-23092274, as soon as possible.
- 16.3 Despite best efforts it is but human to make some errors and omissions in the drafting of various provisions. I shall be extremely thankful if you could either inform me or my colleagues of such inadvertent errors as soon as possible. You may also inform about any operational, administrative or any other difficulty faced or anticipated in the implementation of the new proposals either by the trade or by the field formations.
- 16.4 I would like to express my gratitude for the pre-budget suggestions and inputs which have been received from field formations. I would like to say a special thank you to the Director and Officer on Special Duty who have very diligently carried through the budgetary process. I would be found wanting if I do not thank the three Technical Officers, Dr Abhishek

Chandra Gupta, Dr. Ravinder Kumar and Shri Abhishek Verma, who put in their best.

With regards,

Yours sincerely,

(Amitabh Kumar)

**To:**

**All Chief Commissioners / Director Generals**

**All Principal Commissioners/Commissioners of Service Tax**

**All Principal Commissioners/Commissioners of Central Excise**



**ANNEXURE-I**

**LIST OF CHANGES BEING MADE AND THE DATES ON WHICH THEY WOULD COME INTO EFFECT.**

| <b>SUBJECT</b>   | <b>Para</b>       |
|--|-------------------|
| <b>A. With immediate effect (from 01.03.2016)</b>  |                   |
| (i) Restoration of exemption on services provided to the Government, a local authority or a governmental authority.  | 4.2L(a)           |
| (ii) Restoration of exemption on services to an airport, port.   | 4.2L(b)           |
| (iii) Withdrawal of exemption on services to monorail or metro, in respect of contracts entered into on or before 01.03.2016   | 6.3               |
| (iv) Exemption to services by way of construction etc. in respect of-  | 7.11 to 7.13      |
| (a) housing projects under Housing For All (HFA) (Urban) Mission/Pradhan Mantri Awas Yojana (PMAY);  |                   |
| (b) low cost houses up to a carpet area of 60 square metres in a housing project under “Affordable housing in Partnership” component of PMAY,  |                   |
| (c) low cost houses up to a carpet area of 60 square metres in a housing project under any housing scheme of the State Government,   |                   |
| (v) Exemption to specified services provided by the Indian Institutes of Management (IIM).   | 7.14              |
| (vi) Notification to ensure that Information Technology Software is subjected to either central excise duty or service tax. To deal with assessment of media with recorded Information Technology Software, where RSP is affixed or assessment when RSP is not required. | 5.0               |
| (vii) Insertion of <i>Explanations</i> in Rule 5 of Point of Taxation Rules, 2011  | 12                |
| (viii) Cenvat credit is being allowed to service providers providing services by way of transportation of goods by a vessel from India to abroad.  | 13(d)& 13(i)(iii) |
| (ix) Notification No. 27/2012 – C.E. (N.T.) is amended to specify relevant date.   | 15.4              |
| (x) Service provided by Container Train Operators  | 15.3              |
| <b>B. With effect from 1<sup>st</sup> day of April, 2016</b>   |                   |
| • Exemption on services by senior advocate to other advocate or to a law firm is being withdrawn. Levy under forward charge.   | 6.1               |

|  |                |
|--|----------------|
| <ul style="list-style-type: none"> <li>• A person represented on an arbitral tribunal to an arbitral tribunal;</li> </ul>  | 6.1            |
| <ul style="list-style-type: none"> <li>• Exemption being withdrawn from the services of transport of passengers, by ropeway, cable car or aerial tramway.</li> </ul>   | 6.2            |
| <ul style="list-style-type: none"> <li>• Date from which the definition of support services shall stand deleted from the Finance Act, 1994.</li> </ul>   | 15.2           |
| <ul style="list-style-type: none"> <li>• New exemptions for services by,- <ul style="list-style-type: none"> <li>• Annuity under the National Pension System</li> <li>• Securities and Exchange Board of India (SEBI)</li> <li>• Employees' Provident Fund Organisation (EPFO)</li> <li>• Biotechnology incubators approved by Biotechnology Industry Research Assistance Council (BIRAC).</li> <li>• National Centre for Cold Chain Development</li> <li>• Insurance Regulatory and Development Authority (IRDA) of India.</li> <li>• 'Niramaya' Health Insurance scheme implemented by National Trust</li> <li>• Threshold exemption to services provided by a performing artist in folk or classical art form is being increased from Rs 1 lakh charged per event to Rs 1.5 lakh charged per event.</li> <li>• Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners</li> <li>• Assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development &amp; Entrepreneurship.</li> </ul> </li> </ul> | 7.1 to<br>7.10 |
| <ul style="list-style-type: none"> <li>• Rationalisation of abatement rates and conditions thereof in respect of services by,- <ul style="list-style-type: none"> <li>(i) Tour operator services</li> <li>(ii) transport of passengers by rail.</li> <li>(iii) transport of goods by rail.</li> <li>(iv) shifting of used household goods by a GTA</li> <li>(v) foreman to a chit fund.</li> <li>(vi) renting of motor-cab services.</li> <li>(vii) transport of goods by vessel.</li> </ul> </li> </ul>   | 9.1 to<br>9.9  |

|  |      |
|--|------|
| (viii) Construction of complex, building, civil structure, etc.  |      |
| • Service tax Rules,-  | 11.1 |
| (i) The benefit of (a) quarterly payment of service tax being extended to OPC and HUF and  |      |
| (b) payment on receipt basis being extended to OPC.  | 11.2 |
| (ii) Rule 2(1)(d)(i) (D)(II) modified as an individual advocate other than senior advocate.  | 11.4 |
| (iii) The word “support” shall stand deleted from rule 2(1)(d)(i) (E)  | 10.1 |
| (iv) Rule 2(1)(d)(EEA) making mutual fund agents/distributor as person liable for paying service tax will be deleted   | 11.3 |
| (v) The service tax composition scheme for single premium annuity policies   |      |
| • Reverse charge mechanism   | 10.1 |
| (i) mutual fund agents/distributors to an asset management company under forward charge.   | 10.2 |
| (ii) service provided by Government or local authorities to business entities shall be on the service recipient.   | 13   |
| • Cenvat Credit Rules, 2004 (Annexure –II )  |      |
| (i) Invoice issued by Service provider for removal of inputs and capital goods shall be a valid document   |      |
| (ii) To give option to banking company, a financial institution including non-banking financial company for Cenvat Credit reversal under sub-rule (1), (2) and (3) of the Rule 6 along with rule 6(3B) of the Cenvat Credit Rules, 2004. |      |
| (iii) Cenvat credit of service tax paid on upfront charges for assignment of spectrum/ mining rights etc.  |      |
| (iv) Reversal of Cenvat Credit of inputs/input services which have been commonly used in a taxable output service as well as an activity which is not a ‘service’.   |      |
| (v) Sub-rule (2) of rule 14 being omitted.   |      |
| <b>Changes in the Finance Act, 1994 that get incorporated on enactment of the Finance Bill, 2016</b>   |      |

|      |   |               |
|------|---|---------------|
| (1)  | Explanation 2 in section 65B(44) is to be modified.   | 4.2 A         |
| (2)  | Clause (l) of section 66D would be omitted and clause (11) of section 65B is to be omitted. [educational services]  | 4.1 (A)       |
| (3)  | Insertion of right to use the radio-frequency spectrum and subsequent transfers in section 66E as a <u>Declared Service</u> .   | 4.2B          |
| (4)  | Section 67A is being amended to obtain rule making powers   | 4.2C          |
| (5)  | Section 73 proposed to be amended to increase time limit from 18 months to thirty months.   | 4.2D          |
| (6)  | Insertion of proviso to section 75.   | 4.2E          |
| (7)  | Insertion of Explanation in section 78A   | 4.2 F         |
| (8)  | Amendments in sections 89, 90 and 91.   | 4.2G,<br>4.2H |
| (9)  | In section 93A of the 1994 Act, the words “ <i>prescribed or by notification in the Official Gazette</i> ” shall be substituted.  | 4.2I          |
| (10) | Retrospective effect to notification No. 41/2012- ST, dated the 29th June, 2012 as amended by notification No. 01/2016- ST.   | 4.2J          |
| (11) | Retrospective exemption is to be extended to the construction, repair, maintenance etc of canal, dam or other irrigation works provided to entities set up by Govt. provided during the period from the 1 <sup>st</sup> July, 2012 to 29.01.2014. | 4.2K          |
| (12) | ‘Approved vocational education course’ is to be incorporated in the general exemption notification and exemption to specified educational services (Notification No. 25/2012-ST).   | 4.1(A)        |
| (13) | Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority.   | 4.2L (a)      |
| (14) | Exemption from Service Tax on services by way of construction, erection, etc. of original works pertaining to an airport, port.   | 4.2(L(b)      |
| (15) | Rationalisation of rate of interest in case where is service tax is collected   | 14            |

|  |             |
|--|-------------|
| and not credited in Govt. account and others   |             |
| (16) Dispute resolution scheme, 2016   | 15.5        |
| (17) Returns   | 15.6        |
| <b>With effect from 1<sup>st</sup> day of June, 2016 after enactment of the Finance Bill, 2016 in respect of each provision</b>  |             |
| (1) Krishi Kalyan Cess   | 3.0&<br>3.1 |
| (2) Negative List entry that covers “service of transportation of passengers, with or without accompanied belongings, by a stage carriage” is to be omitted [section 66D (o)(i)]                             | 4.1(B)      |
| (3) Negative List that covers services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance is to be omitted [section 66D (p)(ii)] | 4.1(C)      |
| (4) Exemption to transportation of passengers by a stage carriage other than air conditioned stage carriage is to be exempted  | 8.2         |
| (5) Services by an aircraft will continue to be outside service tax net by way of exemption through notification   | 8.1         |

**Important changes in Cenvat Credit Rules, 2004 effective from 01.04.2016 [ Para 13 of the JS(DO) letter dated 1.03.2016]**

With a view to simplify and rationalize the Cenvat Credit Rules, 2004, a number of amendments are being carried out in them. Following are the important changes:

(a) Wagons of sub heading 8606 92 of the Central excise Tariff and equipment and appliance used in an office located within a factory are being included in the definition of capital goods so as to allow cenvat credit on the same. *[Amendment in rule 2, clause (a) sub-clause (A) item (i) and condition No. (1) of the Rules refers].*

(b) CENVAT credit on inputs and capital goods used for pumping of water, for captive use in the factory, is being allowed even where such capital goods are installed outside the factory. *[Amendment in rule 2 clause (a), sub-clause (A) condition (1A) and clause (k) sub-clause (ii) of the Rules refers].*

(c) All capital goods having value up to Rs. ten thousand per piece are being included in the definition of inputs. This would allow an assessee to take whole credit on such capital goods in the same year in which they are received. *[Amendment in rule 2 clause (k) refers]*

(d) Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of 'exempted service'. This would allow shipping lines to take credit on inputs and

input services used in providing the said service. *[Amendment in rule 2, clause (e) refers]*

(e) Manufacturer of final products is being allowed to take CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer who manufactures the goods as per specification of manufacturer of final products. It is also being provided that a manufacturer can send these goods directly to such other manufacturer or job-worker without bringing the same to his premises. *[Amendment in Rule 4(5) (b) refers]*

(f) Presently, the permission given by an Assistant Commissioner or Deputy Commissioner to a manufacturer of the final products for sending inputs or partially processed inputs outside his factory to a job-worker and clearance there from on payment of duty is valid for a financial year. It is being provided that the same would be valid for three financial years. *[Amendment in rule 4(6) refers]*.

(g) It is being provided that CENVAT credit of Service Tax paid on amount charged for assignment by Government or any other person of a natural resource such as radio-frequency spectrum, mines etc. shall be spread over the period of time for which the rights have been assigned. It is also being provided that where the manufacturer of goods or provider of output service further assigns such right to use assigned to him by the Government or any other person, in any financial year, to another person against a consideration, balance CENVAT credit not exceeding the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year. It is also being provided that CENVAT credit of annual or monthly user charges payable in

respect of such assignment shall be allowed in the same financial year.  
*[Amendment in rule 4, sub-rule (7) refers]*

(h) Rule 6 of Cenvat Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.

(i) sub rule (1) of rule 6 is being amended to first state the existing principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The rule then directs that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations.

(ii) sub-rule (2) of rule 6 is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e. reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used.

(iii) sub-rule (3) of rule 6 is being amended to provide that when a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely, exempted goods and final products excluding exempted goods or when a provider of output services provides two classes of services, namely exempted services and output services excluding exempted services,



then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A).

(iv) The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.

(v) Sub-rule (3A) is being amended to provide the procedure and conditions for calculation of credit allowed and credit not allowed and directs that such credit not allowed shall be paid, provisionally for each month. The four key steps for calculating the credit required to be paid are :-

(a) No credit of inputs or input services used exclusively in manufacture of exempted goods or for provision of exempted services shall be available ;

(b) Full credit of input or input services used exclusively in final products excluding exempted goods or output services excluding exempted services shall be available;

(c) Credit left thereafter is common credit and shall be attributed towards exempted goods and exempted services by multiplying the common credit with the ratio of value of exempted goods manufactured or exempted services provided to the total turnover of exempted and non-

exempted goods and exempted and non-exempted services in the previous financial year;

(d) Final reconciliation and adjustments are provided for after close of financial year by 30<sup>th</sup> June of the succeeding financial year, as provided in the existing rule.

(vi) A new sub-rule (3AA) is being inserted to provide that a manufacturer or a provider of output service who has failed to follow the procedure of giving prior intimation, may be allowed by a Central Excise officer, competent to adjudicate such case, to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of fifteen *per cent.* per annum

(vii) A new sub-rule (3AB) is being inserted as transitional provision to provide that the existing rule 6 of CCR would continue to be in operation upto 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.

(viii) Sub-rule (3B) of rule 6 is being amended so as to allow banks and other financial institutions to reverse credit in respect of exempted services on actual basis in addition to the option of 50% reversal.

(i) Following are the other changes being made in rule 6 of the Cenvat Credit Rules:

(i) Explanations 3 and 4 are being inserted in rule 6, sub-rule (1) so as provide for reversal of CENVAT Credit on inputs/input services which

have been commonly used in providing taxable output service and an activity which is not a 'service' under the Finance Act, 1994.

(ii) Sub-rule (4) is being amended to provide that where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no CENVAT credit shall be allowed on such capital goods. Similar provision is being made for capital goods installed after the date of commencement of commercial production or provision of service.

(iii) Sub-rule (7) is being amended so as to provide that credit taken on inputs and input services used in providing a service by way of "transportation of goods by a vessel from customs station of clearance in India to a place outside India" shall not be required to be reversed by the shipping lines. It may be mentioned here that this service presently qualifies as an "exempted service" on account of Rule 10 of Place of Provision of Supply Rules. Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of 'exempted service' by amending rule 2(e) of the rules as discussed above. Amendment in sub-rule (7) coupled with the corresponding amendment in the definition of Exempted Service is aimed at allowing credit of eligible inputs, input services and capital goods for providing the said service and providing Indian shipping lines a level playing field vis a vis the foreign shipping lines. The credit available may be used by Indian shipping lines to pay service tax on the services of transportation of goods by a vessel from outside India to the customs

station of clearance in India, which would become taxable w.e.f 1<sup>st</sup> June 2016 after enactment of Finance Bill 2016.

(j) Rule 7 of the Rules dealing with distribution of credit on input services by an Input Service Distributor is being completely rewritten to allow an Input Service Distributor to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units. Outsourced manufacturing unit is being defined to mean either a job-worker who is required to pay duty on the value determined under the provisions of rule 10A of the Central Excise Valuation (Determination of Price Of Excisable Goods) Rules, 2000, on the goods manufactured for the Input Service Distributor or a manufacturer who manufactures goods, for the Input Service Distributor under a contract, bearing the brand name of the Input Service Distributor and is required to pay duty on value determined under the provisions of section 4A of the Central Excise Act, 1944. (Amendment in rule 2 (m) and rule 7 refers)

(k) Presently, rule 7 provides that credit of service tax attributable to service used by more than one unit shall be distributed pro rata, based on turnover, to all the units. It is now being provided that an Input Service Distributor shall distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, *inter alia*, the following conditions, ,:

- credit attributable to a particular unit shall be attributed to that unit only.
- credit attributable to more than one unit but not all shall be to attributed to those units only and not to all units.
- credit attributable to all units shall be attributed to all the units.

Credit shall be distributed pro rata on the basis of turnover as is done in the present rules.

(l) It is also being provided that an outsourced manufacturing unit shall maintain separate account of credit received from each of the input service distributors and shall use it for payment of duty on goods manufactured for Input Service Distributor concerned. The credit of service tax paid on input services, available with the Input Service Distributor as on 31<sup>st</sup> of March, 2016 shall not be distributed to an outsourced manufacturing unit. Further, provisions of rule 6 of Cenvat Credit Rules, 2004 relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall apply to the units availing the CENVAT credit distributed by Input Service Distributor and not to the Input Service Distributor.

(m) Rule 7B is being inserted in Cenvat Credit Rules, 2004 so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. It is also being provided that a manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs. Procedure applicable to a first stage dealer or a second stage dealer would apply, *mutatis mutandis*, to such a warehouse of the manufacturer.

(n) Presently, an invoice issued by a manufacturer for clearance of inputs or capitals goods is a valid document for availing CENVAT credit. It is being provided that an invoice issued by a service provider for clearance of inputs or

capitals goods shall also be a valid document for availing CENVAT credit.  
*[Amendment in Rule 9 (a) (i) refers.]*

(o) Rule 9A of the Rules is being amended to provide for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the 30th day of November of the succeeding year in the form as specified by a notification by the Board.

(p) The existing sub- rule (2) of rule 14 prescribes a procedure based on FIFO method for determining whether a particular credit has been utilized. The said sub-rule is being omitted. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.