

SERVICE TAX – CHAPTER V

| FINANCE BILL (CLAUSE NO.) | SECTION | NEW LAW | APPLI CABLE w.e.f. | BRIEF OF AMENDMENT |
|---------------------------|----------|--|---|--|
| 93 (A)(i) | 65B(11) | <p>“approved vocational education course” means,—</p> <p>(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or</p> <p>(ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment;</p> | The date of enactment of Finance Bill, 2013 | <p><u>Definition of 'approved vocational education course' provided in section 65B (11) is being amended:</u></p> <p>firstly, the words, 'or State Council of Vocational Training' (SCVT) is being inserted in (i), and secondly, entry at item serial number (iii) is being omitted, for NSDC is not an affiliating body. After the proposed amendment takes effect, courses in 'designated trades' offered by Industrial Training Institute or Industrial Training Center affiliated to State Council of Vocational Training will also be covered by the negative list.</p> |
| 93 (A)(ii) | 65B (40) | <p>(40) "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or the Medicinal and Toilet Preparations (Excise Duties) Act,1955 or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force;</p> | The date of enactment of Finance Bill, 2013 | Definition of "process amounting to manufacture or production of goods", in section 65B(40) being amended to include processes on which duties of excise are leviable under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955(16 of 1955); |
| 93(C) | 66BA | For the purpose of levy and collection of | 1 st July'2012 | Explanation contained in Removal of |

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| | | <p>service tax, any reference to section 66 in the Finance Act, 1994 or any other Act for the time being in force, shall be construed as reference to section 66B thereof.</p> <p>(2) The provisions of this section shall be deemed to have come into force on the 1st day of July, 2012.</p> | (Retrospective Amendment) | <p>Difficulty Order 2/2012 is being introduced as a separate section, namely 66BA. By the authority of this section, references to section 66 (charging section under the positive list approach) in Chapter V of the Finance Act, 1994 or any other act, will be construed as reference to section 66B (charging section under the negative list approach), with effect from the 1st day of July, 2012.</p> |
| 93 (D) | 66D(d)(i) | <p>(d) services relating to agriculture “or agricultural produce”.by way of—</p> <p>(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;</p> | The date of enactment of Finance Bill, 2013 | <p>The word seed has been omitted and thus the benefit has been extended to testing activities directly related to production of any agricultural produce like soil testing, animal feed testing, testing of samples from plants or animals, for pests and disease causing microbes will be covered by the negative list;</p> |
| 93(E) | 73 (2A) | <p>Where any appellate authority or tribunal or court concludes that the notice issued under the proviso to sub-section (1) is not sustainable for the reason that the charge of,—</p> <p>(a) fraud; or</p> <p>(b) collusion; or</p> <p>(c) wilful misstatement; or</p> <p>(d) suppression of facts; or</p> <p>(e) contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax, has not been established against the person chargeable with the service tax, to whom the notice was issued, the Central Excise Officer</p> | The date of enactment of Finance Bill, 2013 | <p>This sub-section is inserted to harmonize the Central Excise and Service Tax law. As a result, if a show cause notice issued under proviso to sub-section (1) of section 73, is not found sustainable by an appellate authority or tribunal or court, the same will be deemed to be a notice issued for a period of eighteen months.</p> |

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| | | shall determine the service tax payable by such person for the period of eighteen months, as if the notice was issued for the offences for which limitation of eighteen months applies under sub-section (1). | | |
| 93 (F) | 77(1)(a) | (a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to <u>ten thousand rupees</u> | The date of enactment of Finance Bill, 2013 | Maximum Penalty imposable for failure to obtain registration will be Rs. 10,000/- only. |
| 93 (G) | 78A New Section | 78A. Where a company has committed any of the following contraventions, namely:— (a) evasion of service tax; or (b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or (c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or (d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then any director, manager, secretary or other officer of such | The date of enactment of Finance Bill, 2013 | New Section inserted to make provision for imposition of penalty on director, manager, secretary or other officer of the company, who is in any manner knowingly concerned with specified contraventions with <u>maximum penalty of Rs.1 lac.</u> |

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| | | company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees. | | |
| 93 (H) | 83 | SECTION 83. Application of certain provisions of Act 1 of 1944. — The provisions of the following sections of the Central Excise Act, 1944 (10 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :- <u>Sub-section (2) of 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 31, 32, 32A to 32P, 33A, 35EE, 34A, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D ,38A and 40.</u> | The date of enactment of Finance Bill, 2013 | This is just a clarification purpose. The figure and letter “9A”, shall be substituted by the words, brackets, figures and letter "subsection (2) of section 9A”. |
| 93 (I) | 86(5) | SECTION 86. Appeals to Appellate Tribunal. (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (3) or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period. | The date of enactment of Finance Bill, 2013 | Sub-section (1) is introduced and thus in case of assessee appeal also, appellate tribunal can admit an appeal or permit the filing of memorandum of cross objections after the expiry of the relevant period. |

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| 93 (J)(a) | 89(1)(i)/(ii) | <p>(i) in the case of an offence specified in clauses (a), (b) or (c) where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years: Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;</p> <p>(ii) in the case of the offence specified in clause (d), where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to seven years: Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;</p> <p>(iii) in the case of any other offences, with imprisonment for a term, which may extend to one year.”;</p> | The date of enactment of Finance Bill, 2013 | <p>Section 89 is being amended</p> <p>Case-1: an offence specified in 89(1) (a), (b) or (c) and amount exceeds Rs. 50 lakhs punishment shall be minimum 6 months & maximum 3 years.</p> <p>Case-2: in the case of failure to pay service tax collected within 6 months and amount exceeds Rs. 50 lakhs punishment shall be minimum 6 months & maximum 7 years.</p> <p>Case-3: in all other cases, the punishment shall be imprisonment for a term which may extend to one year.</p> |
| 93J(b) | 89(2) | <p>(2) If any person is convicted of an offence punishable under—</p> <p>(a) clause (i) or clause (iii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to three years;</p> <p>(b) clause (ii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to seven years.</p> | The date of enactment of Finance Bill, 2013 | <p>If any person is convicted of an offence punishable under—</p> <p>(a) clause (i) or clause (iii), then, he shall be punished for the second and for every subsequent offence with imprisonment which may extend to three years;</p> <p>(b) clause (ii), then, he shall be punished for the second and for every subsequent offence with imprisonment which may extend to seven years.</p> |

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| 93 (K) | 90 New Section | <p>90.(1) An offence under clause (ii) of sub-section (1) of section 89 shall be cognizable.</p> <p>(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences, except the offences specified in sub-section (1), shall be non-cognizable and bailable.</p> | The date of enactment of Finance Bill, 2013 | This section is introduced to specify and differentiate cognizable offences from non-cognizable and bailable offences. |
| 93 (K) | 91 New section | <p>91. (1) If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.</p> <p>(2) Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.</p> <p>(3) In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973.</p> <p>(4) All arrests under this section shall be carried out in accordance with the</p> | The date of enactment of Finance Bill, 2013 | This section is being introduced to provide for power to arrest; Commissioner of Central Excise is empowered to authorize any officer of Central Excise not below the rank of Superintendent of Central Excise, to arrest a person for specified offences particularly non-payment of collected service tax |

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| | | provisions of the Code of Criminal Procedure, 1973 relating to arrests. | | |
| 93 (L) | 95 (1-J) | <p>If any difficulty arises in giving effect to section 93 of the Finance Act, 2013, in so far as it relates to amendments made by the Finance Act, 2013 in Chapter V of the Finance Act, 1994, the Central Government may, by an order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:</p> <p>Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2013 receives the assent of the President</p> | One year from the date on which the Finance Bill, 2013 receives the assent of the President | This sub-section is introduced to empower the Central Government for removal of difficulty in respect of amendments carried through the Finance Act'2013. |
| 93 (M) | 99 | Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, no service tax shall be levied or collected in respect of taxable services provided by the Indian Railways during the period prior to the 1st day of July, 2012, to the extent notices have been issued under section 73, up to the 28th day of February, 2013. | Retrospective Exemption | Retrospective exemption is being extended to the Indian Railways on the service tax leviable on various taxable services provided by them during the period prior to the 1st day of July 2012, to the extent show cause notices have been issued upto the 28th day of February 2013. |

**SERVICE TAX
CHAPTER VI**

SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013

| FINANCE BILL (CLAUSE NO.) | SECTION | NEW LAW | APPLICABLE w.e. f. | BRIEF OF AMENDMENT |
|--------------------------------------|----------------|----------------|--|---|
| 94 TO 104 | NA | See Annexure-A | The scheme will be operational from the date on which the Finance Bill, 2013 receives the assent of the President. | <p>AMNESTY SCHEME FOR NON FILERS AND STOP FILERS :</p> <p>To encourage voluntary compliance and broaden the tax base, it is proposed to provide one time amnesty by way of (i) waiver of interest and penalty; and (ii) immunity from prosecution, to the stop filers, non-filers or non-registrants or service providers (who have not disclosed true liability in the returns filed by them during the period from October 2007 to December 2012) who pay the "tax dues".</p> |

Relevant Extract of Memorandum 2 of Finance Bill, 2013

RATIONALIZATION OF ABATEMENT:

At present taxable portion for service tax purpose is prescribed as 25% uniformly for constructions where value of land is included in the amount charged from the service recipient. This is being rationalized. Accordingly, where the carpet area of residential unit is upto 2000 square feet. or the amount charged is less than One Crore Rupees, in the case of 'construction of complex, building or civil structure, or a part thereof, intended for sale to a buyer, wholly or partly except where the entire consideration is received after issuance of completion certificate by the competent authority', taxable portion for service tax purpose will remain as 25%; in all other cases taxable portion for service tax purpose will be 30%. This change will come into effect from the 1st day of March, 2013.

REVIEW OF EXEMPTIONS (to take effect from 1st day of April, 2013):

(A) The following exemptions are being rationalized:

- Rationalization of **exemption limit prescribed for charitable organizations**, providing service towards any other object of general public utility. So far, the limit was 25 Lakh Rupees per annum. Now, they will be covered by the threshold exemption.
- Exemption provided to **restaurants other than those having (i) air-conditioning and (ii) license to serve liquor**, is being rationalized; condition regarding 'license to serve liquor' is being omitted. Therefore, with effect from 1st April, 2013, service tax will be leviable on taxable service provided in restaurants with air-conditioning or central air heating in any part of the establishment at any time during the year.
- Rationalization of **exemption to transport of goods by road and rail/vessel**.

(B) The following exemptions are being withdrawn:

- Services provided by **an educational institution by way of renting of immovable property**.
- Temporary transfer or permitting the use or enjoyment of a **copyright relating to cinematographic films** was fully exempt so far; now, this exemption will be restricted to exhibition of cinematograph films in a cinema hall or a cinema theatre.
- Services by way of **vehicle parking to general public**.
- **Services provided to Government, a local authority or a governmental authority, by way of repair or maintenance of aircraft**.

ANNEXURE-A

SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013

This Scheme may be called the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

Definitions

(1) In this Scheme, unless the context otherwise requires,—

(a) “Chapter” means Chapter V of the Finance Act, 1994;

(b) “declarant” means any person who makes a declaration under sub-section (1) of section 97;

(c) “designated authority” means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;

(d) “prescribed” means prescribed by rules made under this Scheme;

(e) “tax dues” means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.

(2) Words and expressions used herein and not defined but defined in the Chapter or the rules made thereunder shall have the meanings respectively assigned to them in the Chapter or the rules made thereunder.

Person who make declaration of tax dues

(1) Any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the 1st day of March, 2013:

Provided that any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return:

Provided further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

(2) Where a declaration has been made by a person against whom,—

(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of —

(i) search of premises under section 82 of the Chapter; or

(ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable 1 of 1944. to the Chapter under section 83 thereof; or

(iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or

(b) an audit has been initiated,

and such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

Procedure for making declaration and payment of tax dues.

(1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.

(3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent. of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.

(4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be,

section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

(6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4) the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

Immunity from penalty, interest and other proceeding.

(1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 97 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

(2) Subject to the provisions of section 101, a declaration made under sub-section (1) of section 97 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 97 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

No refund of amount paid under the scheme.

Any amount paid in pursuance of a declaration made under sub-section (1) of section 97 shall not be refundable under any circumstances.

Tax dues declared but not paid.

Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues alongwith interest thereon shall be recovered under the provisions of section 87 of the Chapter.

Failure to make true declaration.

- (1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.
- (2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.
- (3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

Removal of doubts.

For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 98.

Power to remove difficulties.

- (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules.

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and the manner in which a declaration may be made under sub-section (1) of section 97;

(b) the form and the manner of acknowledging the declaration under sub-section (2) of section 97;

(c) the form and the manner of issuing the acknowledgement of discharge of tax dues under sub-section (7) of section 97;

(d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.