HIGHLIGHTS OF THE FINANCE BILL (No. 2), 2014

Budget proposals and announcement made by the Hon'ble Finance Minister while presenting the Union Budget for the current fiscal year and the corresponding amendments are segregated by TRU under three broad categories:

1. Widening of tax base
2. Compliance enhancement
3. Facilitation

These changes made/proposed are discussed hereunder in the order in which they shall become applicable.

Changes applicable w.e.f. 11.07.2014

1. New exemptions granted by addition in Mega Exemption Notification No. 25/2012 dated 20.06.2012 (Notification No. 6/2014 dated 11.07.2014).

a. Exemption has been provided to The Common Bio-medical Waste Treatment Facility Operators providing services by way of treatment, disposal of bio medical waste or processes incidental to such treatment or disposal, **to clinical establishments.**
Where
   - 'clinical establishment' means, hospitals, nursing homes, clinics, etc.;
   - 'Common Bio-medical Waste Treatment Facility' is a set up where biomedical waste, generated from a number of healthcare units, is imparted necessary treatment to reduce adverse effects.
   - 'Biomedical waste' means any waste; generated during diagnosis, treatment, immunization, research activities, production or testing.

b. In order to reduce burden of Service Tax on economically vulnerable section of society, Life micro-insurance schemes approved by the Insurance Regulatory Development Authority (IRDA) are exempt from service tax, where **insurance cover does not exceed Rs. 50,000/-**. Further, the term "life micro-insurance product" has been defined in the said notification which is the same as the meaning assigned to it in clause (e) of regulation 2 of the Insurance Regulatory and Development Authority (Micro-insurance) Regulations, 2005. The said definition is reproduced for ready reference as under:
"(e) "life micro-insurance product" means any term insurance contract with or without return of premium, any endowment insurance contract or health insurance contract, with or without an accident benefit rider, either on individual or group basis, as per terms stated in Schedule-II appended to these regulations;"

c. Specialized financial services like external asset management, custodial services, securities lending services etc. received by RBI in the course of management of foreign exchange reserves from outside India has been exempted from service tax vide aforementioned notification. This exemption has been provided only in a limited manner as earlier all services received by RBI were subject to service tax.

d. The Services provided by the tour operator's fall under Rule 9 of Place of Provision Rules, 2012. As per above mentioned rule, place of provision is the place of service provider i.e. tour operator

in this case. This means if service provided by tour operator located in India to a foreign tourist in relation to tour which is to be wholly performed outside India, will also attract Service Tax.

Thus, in order to exempt such case from the levy of service tax an exemption has been introduced, exempting services provided by Indian Tour Operators to foreign tourists in relation to tours wholly conducted outside India. E.g. services provided to a Sri Lankan for a tour conducted in Bhutan by an Indian tour Operator is exempt.

However, services provided by a tour operator in relation to an inbound or an outbound tour continue to be leviable to service tax.

e. **Transportation of organic manure and cotton, ginned or baled by road, rail or vessel made exempted from Service Tax.**

Exemption in respect of Services provided by way of transportation by road, rail or a vessel from one place in India to another has been extended in respect of **organic manure and cotton – ginned (cotton fibre extracted from seeds in loose form) or baled (pressed package of cotton of whatever size or density).** In other words, the transportation of organic manure and cotton, ginned or baled by all the three modes of transport as mentioned above is exempted.

f. Services by way of loading, unloading, packing, storage or warehousing of cotton, ginned or baled made exempted.

Earlier the aforesaid exemption was granted only in respect of **rice**, now it has further been extended to **Cotton, ginned or baled**.

Thus, from 11.07.2014 any research done in respect of newly developed drugs whether clinically or otherwise on human participants or others is now liable to Service Tax.

2. Amendment in Existing Entries of Notification No. 25/2012 dated 20.6.2012

a. Entry No. 9 related to Educational Institutions

Earlier, vide above entry, an exemption was provided with regard to services provided to Educational Institutions (in respect of education exempted from service tax) by way of Auxiliary Educational Services or Renting of Immovable Property.

However, vide Notification No. 06/2014-ST dated 11.07.2014, the said entry has now been substituted and reads as under:

"9. Services provided,-

(a) by an educational institution to its students, faculty and staff;
(b) to an educational institution, by way of,-
  (i) transportation of students, faculty and staff;
  (ii) catering, including any mid-day meals scheme sponsored by the Government;
  (iii) security or cleaning or house-keeping services performed in such educational institution;
  (iv) services relating admission to, or conduct of examination by, such institution;"

Further, Notification No. 06/2014-ST dated 11.07.2014 has also defined the term "educational institution" under clause (oa) which has been inserted after clause (o) of paragraph 2 of the aforesaid notification.

Education institution has been defined "*as any institution providing services specified in clause (l) of Section 66D of Finance Act, 1994.*"

Effect of the Changes brought with the introduction of New Entry No. 9 as reproduced above:

- The substitution of the aforesaid Entry No. 9 has restored that all services provided by an educational institution to its students, faculty and staff, whether in relation to education or not, have been exempted from the levy of Service Tax.

- Further, till now, exemption to services received by an educational institution were being operated under the concept of "Auxiliary Educational Services" which was defined under clause (f) of paragraph 2 of the said Notification. However, in order to avoid confusions prevailing with regard to the scope and meaning of "auxiliary educational services", the same has been omitted and substituted by specific services (as reproduced above under clause (b) of Entry No. 9) which when received by an educational institution would be exempted from the levy of service tax. Therefore, clarity has been brought to the effect as to what services received by educational institutions would be exempt from Service Tax by clearly specifying such services under the aforesaid clause (b) of Entry No. 9.

- It is pertinent to mention here that services provided by any person to an educational institution by way of imparting any skill, knowledge, education or development of course content or any other knowledge –enhancement activity, whether for the students or for the faculty which were earlier exempted as they were covered under the definition of "auxiliary educational services", have now been made taxable, as after the omission of the concept of "auxiliary educational services" such services do not get covered under the scope of clause (b) of the new Entry No. 9 (as reproduced above).

Renting of Immovable Property to an Educational Institution – Now Taxable

- Exemption available to services provided by way of **renting of immovable property to an educational institution** has now been **withdrawn** with effect from 11.07.2014.

b. <u>Entry No. 18 related to Accommodation in Hotels</u>

Earlier, vide entry no. 18 of the aforesaid notification, exemption was granted to services by way of renting of a hotel, inn, guest house, club or campsite **or other commercial places meant** for residential or lodging purposes, having a declared tariff of a unit of accommodation below rupees one thousand per day or equivalent.

However, vide Notification No. 06/2014-ST dated 11.07.2014, the phrase "**or other commercial places meant**" as mentioned in the earlier entry no. 18 has been substituted by the phrase "**by whatever named called**".

Effect of the Change brought by New Entry No. 18 as reproduced above:

The phrase "commercial places" as used in the earlier entry no. 18 created a confusion that whether places like *ashrams and dharamshalas* which also provides accommodation to people at a nominal charge would be covered under the term "commericial places" or not. Hence, doubts were raised as to whether exemption under the said entry would be available to such *ashrams and dharamshalas* also. In order to bring clarity on this issue, the new entry no. 18 has used the phrase "by whatever name called" instead of the words "commercial places". The effect of such substitution has made it amply clear that *ashrams and dharamshalas*

meant for residential or lodging purposes and having a declared tariff unit of a unit of accommodation below rupees one thousand per day or equivalent will be covered under the aforesaid entry no. 18 and exemption shall be available to them.

c. Exemption in respect of transportation of passengers by air conditioned contract carriages is withdrawn.

Earlier, as per clause (b) of Entry no. 23, services of passenger transportation by a contract carriage other than for the purpose of tourism, conducted tour, charter or hire was exempted from Service Tax. Now, the scope of exemption has been reduced by withdrawing the exemption in respect of air conditioned contract carriages. As a result, any service provided for transportation of passenger by air conditioned contract carriage including which are used to point to point travel such as buses is liable to Service Tax at an abated value of 40% of the amount charged from service receiver. Therefore, effective Rate of Service tax will be 4.944%. Further, services provided by non – air conditioned contract carriages for purposes other than tourism, conducted tour, charter or hire continue to be exempted.

d. Exemption in respect of services provided to Government, local authority or Governmental Authority made more specific.

In clause (a) of Entry no. 25, the words 'carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to' have been deleted.

The impact of such deletion is that the exemption in respect of services provided by the municipality to Government or local authority or a governmental authority has been made more specific. In other words, the exemption shall be limited to the services ordinarily provided by the Municipality to such authorities i.e. services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation and not to other services such as consultancy or designing. For instance any services provided by any architect or other services in respect of laying down water pipelines for water supply or waste management etc. are liable to service tax.

3. Technical testing of newly developed drugs on human participants by a clinical research organization made taxable.

Exemption to services provided by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies **on human participants by a clinical research** organisation approved to conduct clinical trials by the Drug Controller General of India has been withdrawn w.e.f 11.07.2014. Thus, these services shall be taxable w.e.f. 11.07.2014.

4. Insertion of a new entry in Notification No 26/2012 dated 20.06.2012:-

W.e.f. 11.07.2014, the following entry has been inserted in Notification No 26/2012 after Entry No 9 vide Notification No 8/2014 dated 11.07.2014:

"9A	Transport of passengers, with or without accompanied belongings, by a contract carriage other than motorcab.	40	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.";

As per aforesaid Entry, transport of passenger services provided by a Contract Carriage shall be eligible for abatement of 60% as per Notification No 26/2012 dated 20.06.2012 read with Notification No 8/2014. It is pertinent to mention here that "transportation of passengers by non-air conditioned contract carriage other

than radio taxi, for transportation of passengers excluding tourism, conducted tours, charter or hire" have been exempted vide Notification No 25/2012 read with Notification No 6/2014. Thus, the aforesaid abatement shall be applicable only in respect of services of transport of passengers other than covered under the exemption notification.

Further, it is pertinent to mention here that in the aforesaid Entry the word 'radio taxi' shall also be added with effect from the date of enactment of Finance Bill 2014 i.e. abatement shall also be available in respect of transport of passengers by Radio Taxis. This is a consequential amendment as presently services provided by Radio Taxi have been specified under Negative List of Services, however, the said services have been proposed to be excluded from the Negative List vide Finance Bill 2014. Thus, when the notifications after the enactment of finance bill shall be issued, transport services provided by Radio Taxis shall become taxable, however, an abatement of 60% shall be available in respect of such services vide aforesaid entry.

5. Insertion of words 'by the Service provider' in Column No 4 of Entry No 7 of Abatement Notification No 26/2012 dated 20.06.2012 i.e. in entry 'services of goods transportation agency in relation to transportation of goods':-

This amendment specifies that for claiming benefit of abatement as per Notification No 26/2012 dated 20.06.2012, Service Provider i.e. Goods Transportation Agency should not have availed CENVAT Credit of the Inputs, Input Services or Capital Goods used by it. In other words, a person discharging Service Tax Liability under Reverse Charge in respect of services received from Goods Transport Agencies is eligible to avail the benefit of abatement provided Goods Transport Agency has not availed the benefit of CENVAT Credit.

6. Insertion of following condition in column 4 of Entry 8 of Notification No 26/2012 dated 20.06.2012 i.e. in entry 'Services provided in relation to Chit':-

Vide Notification No 8/2014 dated 11.07.2014 following condition has been inserted in Entry No 8 of Notification No 26/2012 dated 20.06.2012:

> *"CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.";*

This amendment is also in the nature of consequential amendment as presently the words 'same as above' have been used in this column and the Entry above this Entry is of abatement in respect of services provided by Goods Transportation Agency. Thus, when the condition specified in the entry of Transport of Goods by Goods Transportation Agency shall be amended vide clause (i) of Notification No 8/2014 dated 11.07.2014, this needs to be amended.

It is pertinent to highlight here that this entry has been quashed by Hon'ble High Court of Delhi in the case of M/s Delhi Chit Fund Association Versus Union of India and Another [2013(30)S.T.R.347(Del.)]

7. Scope of Reverse Charge Mechanism has been widened [Amendment in Notification No. 26/2012-S.T. Dated 20.06.2012 Vide Notification No. 10/2014-ST Dated 11.07.2014]

Entry 1A: Sub-Clause (ia)

The Government vide Notification No. 10/2014 dated 11th July 2014 has inserted sub-clause (ia) after Clause (i) of Notification No. 26/2012-S.T. Dated 20.06.2012 as given below:

Sl.No.	Description of a service	Percentage of service tax payable by the person	Percentage of service tax payable by the person

		providing service	receiving the service
(1)	**(2)**	**(3)**	**(4)**
1A	provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company	Nil	100%

The aforesaid entry has casted the responsibility of payment of service tax on the banking company or a financial institution or a non-banking financial company in respect to services received from recovery agent.

Entry 5A: Sub-Clause (iva)

The Government vide Notification No. 10/2014 dated 11th July 2014 has amended sub-clause (iva) of Notification No. 26/2012-S.T. dated 20.06.2012. **The amended Entry is as under:**

5A	provided or agreed to be provided by a director of a company or a **body corporate** to the said company or the **body corporate.**	Nil	100%

Prior to Notification No. 10/2014 dated 11th July 2014, Reverse Charge Mechanism was applicable in respect of services provided or agreed to be provided by a director of a company to the said company. However, the introduction of the words '**body corporate'** has widened the scope of the above entry so as to include services of a director of a body corporate to a body corporate. The term "body corporate" in the context of Finance Act, 1994 has already been defined under Rule 2(1)(bc) of Service Tax Rules, 1994 as applicable from 1.7.2012. As per Rule 2(1)(bc), *"body Corporate" has the meaning assigned to it in clause (7) of the section 2 of the Companies Act, 1956"*. Referring to Section 2(7) of the Companies Act, one would find that term "body corporate" has been defined as a term interchangeable to term "corporations". It is wide enough to include company incorporated outside India and expressly excludes corporation sole, co-operative societies registered under any law relating to co-operative societies and any other body corporate (not being a company under Companies Act, 1956) specified by Central Government by way of notification in this behalf.

8. Changes in CENVAT Credit Rules, 2004 (W.e.f 11.07.2014)

A. The **Notification No 21/2014 – Central Excise (N.T.) dated 11.07.2014** has inserted a clause (qa) after clause (q) of Rule 2 of CENVAT Credit Rules, 2004. The said clause define "place of removal" as under:

(qa) "place of removal" means-
(i) a factory or any other place or premises of production or manufacture of the excisable goods;
(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory,

from where such goods are removed

As per rule 2(t) of CENVAT Credit Rules, 2004, **words and expressions used** in said rules and not defined but defined in the Central Excise Act, 1944 or the Finance Act, 1994 shall have the meanings respectively assigned to them in those Acts. Presently, definition of "place of removal" has been defined in Central Excise Act, 1944 and the same definition has been taken in CENVAT Credit Rules, 2004 by aforesaid insertion. Therefore, the said amendment is only of a clarificatory nature and has got no significance for service tax providers.

B. Rule 4(7) of CENVAT Credit Rules, 2004

a) Availment of CENVAT Credit of service tax paid under Reverse Charge:

1. Where 100% service tax liability is of service recipient:

Presently CENVAT Credit in case of an input service where service tax is required to be paid under reverse charge basis (both partial and full) shall be allowed after date of payment of value of services and service tax payable.

However, according to substituted **first proviso to Rule 4(7)** the CENVAT Credit of service tax paid under reverse charge mechanism shall be allowed after date of payment of such service tax, irrespective of the fact whether or not payment of value of services has been made to service provider or not.

2. In case of partial reverse charge i.e. where both service recipient and service provider are liable to discharge service tax liability

In this case there is no change regarding the availment of CENVAT credit i.e. according to **substituted second proviso to Rule 4(7), still** CENVAT Credit in case of an input service where service tax is required to be paid under partial/joint reverse charge basis by the recipient of the service, CENVAT of input services shall be allowed after date of payment of value of services and service tax thereon**.**

b) Consequences of not making payment within three months of the date of the invoice:

In this case there is no change in the legal position i.e. **newly inserted third proviso to Rule 4(7)** provides that if the value of input service as well as service tax thereon is not paid within a period of three months from the date of the invoice, the manufacturer or the service provider who has taken credit on such input service on accrual basis has to make payment of an amount equal to the CENVAT Credit availed on accrual basis. This is further clarifying that said payment may be made by cash or through debiting Cenvat credit.

C. Amendment in Rule (6) (8) of CENVAT Credit Rules, 2004 (w.e.f 11.07.2014)

Department vide **Notification No 21/2014-Central Excise (N.T.) dated 11.04.2014** has inserted a proviso after clause (b) of sub rule (8) of Rule (6) of CENVAT Credit Rules, 2004. The same has been reproduced as under:

"Provided that if such payment is received after the specified or extended period allowed by the Reserve Bank of India but within one year from such period, the service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier in terms of sub rule (3) to the extent it relates to such payment, on the basis of documentary evidence of the payment so received."

As per the aforesaid proviso if payment in convertible foreign currency in respect of exported services (services which satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994) shall not received within six months or extended period as prescribed by Reserve Bank of India, the same shall now fall under the ambit of term exempted service resulting into reversal of CENVAT Credit of service tax taken on input services under Rule (6) (3) of CENVAT Credit Rules, 2004.

However, if such payments are received within one year from the end of six months or extended period, re-credit of such reversed Cenvat shall be available to the exporter.

D. Rule 12A of CENVAT Credit Rules, 2004

Rule 12A prescribes the procedure and facilities for removal of inputs and transfer of CENVAT Credit from one of its registered manufacturing premise or premises to its other registered premises. Presently, a large taxpayer may transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises subject to the conditions specified in said rule.

However, as per the amendment done by **Notification No 21/2014-Central Excise (N.T.) dated 11.07.2014,** a large tax payer shall not be allowed to make such transfer. However, CENVAT available with the large taxpayer up to 11.07.2014 are transferable and can be transferred from one of its registered manufacturing premise or premises to its other registered premises.

9. Procedural Changes for claiming service tax exemption for specified services received by SEZ Units or Developers and used for authorized operations have been made vide Notification No. 7/2014 dated 11.07.2014

a) Specified time limit for issuance of Form A-2:

Presently, there is no prescribed time limit for issuance of authorisation by the department in Form A-2. However, w.e.f 11.07.2014 vide **Notification No 07/2014-Service Tax dated 11.07.2014** aforesaid Form A-2 shall be required to be issued within 15 days from the date of submission of Form A-1**.**

b) Date of validity of Form A-2

As per the amendment a proviso has been introduced which stipulates that Authorization will have validity from the date on which Form A-1 is verified by the Specified Officer of SEZ. However, if Form A-1 is furnished after a period of 15 days from the date of its verification by the Specified Officer, the authorization i.e. Form A-2 shall have validity from the date of furnishing of Form A-1 to the Central Excise Officer.

c) Mandatory requirement for submission of Form A-2

SEZ Units or the Developer will, pending issuance of Form A-2, be entitled to avail upfront exemption on the basis of Form A-1. However, in such a case, the SEZ Unit/Developer would be required to furnish a copy of authorization issued by the Central Excise Officer within 3 months from the date of receipt of specified services. If a copy of authorization is not provided within the said period of three months, the service provider shall pay service tax on the service so provided availing the exemption.

d) Clarification regarding services exclusively used for authorized operations

An explanation has been inserted in Clause (e) which clarifies that a service shall be treated as exclusively used for SEZ operations if the recipient of service is SEZ unit or developer, invoice is in the name of such unit/developer and the service is used exclusively for furtherance of authorized operations in SEZ.

e) No need to mention ST registration No. in case of those taxable services which are subject to full reverse charge

As regards services covered under full reverse charge, it is being mentioned specifically in Form A-1, A-2 and A-3 that there would be no requirement of furnishing service tax registration number of service provider.

f) Compulsory mention of authorization validity date in Specified Form A-2

As per amendment, it has been provided that CEO shall be required to mention the date of validity of authorization in Form A-2.

10. Advance Ruling (Notification No. 15/2014 dated 11.07.2014)

The resident private limited company is being included as a class of persons eligible to make an application for Advance Ruling in respect to a proposed activity to be undertaken.

Changes applicable on the enactment of the Finance Act, 2014

1. **Positive Obligation on the part of the department to adjudicate SCN within specified time period.**

Section 73 is amended by way of insertion a new sub-section (4B) after sub-section 4A. Newly inserted (4B) provides time limit within which Central Excise Officer shall determine the amount of service tax due and finalise the adjudication under sub-section (2) of section 73. Sub-section 4(b) would read asunder:

"(4B) The Central Excise Officer shall determine the amount of service tax due under sub-section (2)-

(a) Within six months from the date of notice where it is possible to do so, in respect of cases whose limitation is specified as eighteen months in sub-section (1);

(b)Within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section 4A".

Under newly inserted sub-section (4B) a positive obligation has been created on the part of the revenue to adjudicate the SCN within 6 months, where limitation period is 18 months. In case, where extended period of limitation has been invoked or where the case is falling proviso to sub-section 4A of section 73, adjudication of SCN is to be done within one year. Though this amendment, on face, seems very pragmatic, in actual it is not so. Obligation to adjudicate SCN within six month or one year as the case may be, is subject to the phrase "where it is possible to do so" thus creating scope to escape from strict compliance of the provision.

2. Scope of Section 80 has been reduced

Earlier Section80 (1) used to read as under
"(1) Notwithstanding anything contained in the provisions of section 76, section 77 1[or 2[first proviso to sub-section (1) of section 78]], no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure."

Sub-section (1) of section 80 is amended by way of substitution of the words, figures, and brackets *"section 77 or first proviso to sub-section (1) of section 78"* by the words and figures *"or section 77"*. Scope of the benefit available under section 80 has been reduced drastically. As per proposed amendment, penalty levied under section 78 cannot be dropped on the basis of reasonable cause. The impact of such amendment would be pervasive as there would be no scope to argue bona fide belief as reasonable cause under section 80. The amendment, it seems, has been proposed to nullify the judicial pronouncements where tribunal had declared the SCN as time barred as larger period of limitation was not invocable for the reason that existence of element of intention to evade tax was negated by lower authority while dropping penalty imposed under section 78 on the basis of bona fide belief. Whatever may be the reason for proposing amendment, once it comes out that penalty under section 78 become mandatory irrespective of the fact whether invocation of extended period is upheld by the adjudicating authority or not.

3. Power to order search and seizure is also conferred on Additional Commissioner of Central Excise and Central Excise Officer Notified by Board

Earlier section 82(1) used to read as under:

"(1) If the Joint Commissioner of Central Excise] has reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under this Chapter are secreted in any place, he may authorise any Superintendent of Central Excise to search for and seize or may himself search for and seize, such documents or books or things."

Sub-section (1) of section 82 has been amended by way of substitution by following:

"(1) where the Joint Commissioner of Central Excise or Additional Commissioner of Central Excise or such other Central Excise Officer as may be notified by the Board has reasons to believe that any document or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Chapter, are secreted in any place, he may authorise in writing any Central Excise Officer to search for and seize or may himself search and seize such documents or books or things".

Substituted provision empowered the Additional Commissioner of Central Excise and any other Central Excise Officer notified by Board to order a search and seize proceedings either by way of authorizing a central excise officer or to conduct such proceedings by himself.

4. Sub-section (2A) of Section 5A, 15,15Aand 15B has been made applicable to Finance Act, 1994

Earlier Section 83 was as under:

"83. The provisions of the following sections of the Central Excise Act, 1944 (1 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: –

Sub-section (2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 11,12E, 14, 15, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F, 35FF to 35-O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40."

Section 83 is amended by way of substitution of words, brackets, figures and letter "sub-section (2) of Section 9A" by words, figures, and letters "*sub-section (2A) of section 5A, sub-section (2) of section 9A"* and Section "*15" by "15, 15A, 15B*".

By inclusion of Sub-section (2A) of Section 5A of Central Excise Act, 1944 under section 83 of Finance Act, 1994 Central Government would be able to add and give retrospective effect to the explanations to any notification issued earlier under section 93 of the Finance Act, 1994 subject to the condition that such explanation must have been added within a year from the date of issue of such notification. Against the policy statement of Finance minister retrospective amendment is proposed.

By inclusion of section 15 of Central Excise Act, 1944 all officers of police and customs and officers of village government and officers of government engaged in collection of land revenue is empowered and under obligation to assist the Central excise Officers in the execution of Finance Act, 1994.

By inclusion of section 15A, and 15B of Central Excise Act, 1994, every person specified and responsible for functions specified therein, under sub-section (1) of section 15A shall be under obligation to file an information return to such authority in respect of such period within such time as may be prescribed period.

By virtue of section 15B of Central Excise Act, 1944 penalty would be leviable if person specified under section 15A fails to furnish such return to such authority within such time as may be prescribed.

5. <u>Amendment in Section 83 (Section 35F of the Central Excise Act applicable Finance Act has been substituted)</u>

Section 83 of the Act enjoins application of certain provisions of the Central Excise Act, 1944 (the 1944 Act) to service tax. Section 35 F of the 1944 Act is one such provision which is made applicable to service tax matters. Section 35 F of the 1944 Act enjoins pre-deposit of tax, interest and penalties as assessed, when an appeal is preferred against an order, whether the appeal be preferred before the Commissioner (Appeals) or to Tribunal. The first proviso to Section 35 F authorizes the appellate authority to dispense with the pre-deposit requirement, where the appellate authority is of the opinion that deposit of the duty/ tax demanded or penalty levied would cause undue hardship to an appellant but subject to such conditions as the appellate authority may deem fit to impose, so as to safeguard the interest of Revenue.

However, vide Finance Bill, 2014, the Government has proposed to substitute section 35F of the Central Excise Act. The relevant extract of the section is reproduced hereunder:

35F. The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any

appeal, –

(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty demanded or penalty imposed or both, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Commissioner of Central Excise;

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B,unless the appellant has deposited seven and a half per cent. of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B,unless the appellant has deposited ten per cent. of the duty demanded or penalty imposed orboth, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and

appeals pending before any appellate authority prior to the commencement of the Finance (No.2)Act, 2014.

Explanation – For the purposes of this section "duty demanded" shall include, –

(i) amount determined under section 11D;

(ii) amount of erroneous Cenvat credit taken;

(iii) amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules,2002 or the Cenvat Credit Rules, 2004

By proposing to substitute section 35F of the Central Excise Act, the Government has prescribed a mandatory fixed pre-deposit amount of 7.5% of the duty demanded or penalty imposed or both, if an assessee is aggrieved by an order of the Adjudicating Authority and prefers a first appeal. The First Appeal could either be before Commissioner (Appeals), if the Order has been passed by an adjudicating authority lower than the rank of

Commissioner; or the First appeal could be before the Custom, Excise and Service tax Tribunal, if the Order has been passed by the Commissioner.

However, if the assessee prefers a second appeal i.e an appeal before the Hon'ble Tribunal against the order of the Commissioner (Appeals), then the assessee has to make a mandatory fixed pre-deposit of 10% of the duty demanded or penalty imposed or both.

Further, vide Explanation to section 35F, the Government has clarified as to what shall constitute duty demanded which includes *duties of excise collected from the buyer to be deposited with the Central Government* as per section 11D of the Act, or any amount of CENVAT credit wrongly taken or any amount which is payable as per the CENVAT Credit Rules.

Such amendment has been proposed with a view to freeing appellate authorities from hearing stay applications listed before it, and to take up regular appeals for final hearing and disposal.

However, the author is of the view that this substitution proposed to be made in Section 35F of the Central Excise Act will, highly be in the **detrimental interest of genuine assesses** who might get **wrongly implicated** by the Revenue Authorities for evasion of taxes/duty. Further, such substitution will only lead to **empowering** Revenue Authorities, since initiation of any proceedings against an assessee, will ultimately lead to deposition of a certain percentage of amount, by an assessee, with the treasury; even if it not a legitimate due to the Government. To say it simply, such amendment, in a way, will impact a genuine assesses; **Right to appeal** before the higher authorities.

Furthermore, taking away the right of dispension of Pre-deposit and making it **mandatory** to deposit a certain percentage of duty demanded before filing an appeal, would cause undue-hardship to small entrepreneurs/manufacturers/service providers. It is noteworthy that a small entrepreneur, as per the present amendment, will first have to make a pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing an appeal before Commissioner (Appeals) and if, the assessee doesn't get a favorable order, then again he will have to make a mandatory pre-deposit of 10% of the duty demanded or penalty imposed or both, if he approaches the higher authority i.e the Hon'ble Tribunal. Therefore in totality, the assessee will have to pay a total of 17.5% of pre-deposit of duty demanded and equivalent percentage of penalty, which will only lead to causing **undue hardship** and **harassment** to small entrepreneurs at the hands of the Revenue.

Further, if the assessee succeeds in its appeal, then the prescribed percentage of amount deposited with the Government will have to obtained by way of refund, which itself is a daunting task for an assessee to obtain from the Department. The author is of the firm view, that such substitution to section 35F of the Act, is highly unjustified, harsh and violates the principles of natural justice of an assessee by impacting its Right to appeal before higher Judicial/Quasi Judicial Forums. On the other hand, such substitution to Section 35F will benefit tax evaders, as by depositing a prescribed percentage at the time of appeal, the matter could be prolonged till the appeal comes up for regular hearing before the Hon'ble Courts, which in the present times, and with the huge number of pending cases in Courts, takes a considerable time to get disposed off.

However, the author is also of the view that since by substituting Section 35F, the requirement of pre-deposit for grant of stay during the pendency of the appeal has been annulled, as the matter will now only come up for regular hearing before the Tribunal's, the controversy with regards to vacation of **stay** , after the expiry of 365 days, in terms of Section 35C (2A) of the Central Excise Act shall also lose its significance.

6. Corresponding amendment to Section 86(6A)

Before the proposed amendment of Section 86(6A) vide Finance Bill, 2014, every application which was made before the Hon'ble Tribunal, whether it was for grant of stay/waiver of pre-deposit or for rectification of mistake or for restoration of an appeal or for any other purpose was accompanied by a fee of Rs. 500/-.

However, vide Finance Bill, 2014, section 86(6A) has been proposed to be amended wherein the words "**for grant of stay"** have been omitted, meaning thereby that applications which are listed for stay will not be accompanied with a fee of Rs. 500/- as was the proposition earlier.

The author is of the view, that this amendment has been proposed to be made in consonance with Section 35F of the Central Excise Act, wherein the Government has made it mandatory for an assessee, to make a pre-deposit of 7.5% of the duty demanded or penalty imposed or both, before it approaches the Hon'ble Tribunal by way of an appeal. Further such amendment has been proposed with a view to freeing appellate authorities from hearing stay applications listed before it, and to take up regular appeals for final hearing and disposal.

Therefore, once an assessee has already deposited a prescribed percentage of the duty demanded as mandated by the statute, the application of grant of stay/waiver of pre-deposit loses its significance, as a result of which such application is not required to be listed with the appeal. Further, the Government intends the appellate authorities to hear regular appeals for final hearing and freeing them from hearing stay applications. Accordingly section 86(6A) has been proposed to be amended wherein such application for grant of stay is not required to be accompanied with the appeal.

7. <u>Amendment to Section 87(c) pertaining with recovery of amount due to Central Government</u>

In Section 87, in clause (c), the following proviso shall be inserted, namely:—

"Provided that where the person (hereinafter referred to as predecessor) from whom the service tax or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining the written approval of the Commissioner of Central Excise, for the purposes of recovering such service tax or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change."

The proposed proviso to be inserted in Section 87(c) of the Finance Act, giving power to the Central Excise officer to recover Government dues of the predecessor of business from the successor of the business, has been made, to bring the provisions of the Finance Act, in respect of recovery of Government dues, at par with the Central Excise Act. Similar parallel provision are also stipulated in section 11 of the Central Excise Act.

The author is of the view that insertion of such proviso to section 87 of the Act, will not allow unscrupulous persons to evade/avoid tax liabilities arising under service tax law, by transferring or disposing of their business or trade in whole or in part due to change of ownership thereof. Therefore, the Central Excise officer, to recover Government dues of service tax, may attach and sell the assets, which the successor of business has obtained from its predecessor, after the change of ownership of business. It is also relevant to note that the Central Excise Officer, besides attaching and selling assets, which the successor of business has obtained from its predecessor, has also been empowered to attach and sell all **goods of** the successor of business, which he is in possession or custody off, after obtaining written approval of the same from Commissioner of Central Excise

8. <u>Amendment in section 94 – Scope enhanced</u>

Following clauses have been inserted in section 94(2) which empowers the Central Government to make rules for administrating the Service tax laws:

"(k) impositions, on persons liable to pay service tax, for the proper levy and collection of the tax, of duty of furnishing information, keeping records and the manner in which such records shall be verified;

(a) make provisions for withdrawal of facilities or imposition of restrictions (including restrictions on utilization of CENVAT Credit) on a service provider or exporter, for dealing with evasion of tax or misuse of CENVAT Credit;
(b) authorization of the Central Board of Excise and Customs or Chief Commissioners of Central Excise to issue instructions, for any incidental or supplemental matters for the implementation of the provisions of this Act;
(c) any other matter which by this Chapter is to be or may be prescribed."

Implication(s) of this amendment

The newly inserted clauses empowers the central government to make rules for:

- Furnishing information, keeping records and the manner in which such records shall be verified. It means that now, the Government can make rules for prescribing the manner in which records of service tax to be kept on which the service tax law was silent earlier;
- Provisions for withdrawal of facilities or imposition of restrictions with regard to utilization of CENVAT Credit or for dealing with evasion of tax of misuse of CENVAT;
- Issue instructions, for any incidental or supplemental matters for the implementation of the provisions of this Act. This clause is inserted to cover any area which is specifically not included in the Section 94.

Changes applicable from the date to be notified after enactment

Section 66D - Negative List of Services

1. Extension of levy of service tax to the sale of space of advertisement in any media other than Print Media

Presently, sale of space or time for advertisement other than advertisements in radio or television is exempted from the levy of service tax vide Section 66D(g) of the Finance Act, 1994. The same reads as under:

"(g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;"

In other words, sale of space for advertisements in print media, internet, billboards, mobile phones, public places, conveyances, ATMs other than radio or television is not leviable to service tax. However, vide Finance (No. 2) Bill, 2014, Hon'ble Finance Minister proposed to exempt only sale of space for advertisement in print media from the levy of service tax by substitution the above stated entry as under:

(g) Sale of space for advertisements in print media

As per above stated clause, sale of space in print media shall be exempted from levy of service tax.

The term "Print Media" has been defined vide Finance Bill, 2014 by inserting a new clause (39a) under Section 65B of the Finance Act, 1994. The same reads as under:

'(*39a*) "print media" means,—

(*i*) "book" as defined in sub-section (*1*) of section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;

(*ii*) "newspaper" as defined in sub-section (*1*) of section 1 of the Press and Registration of Books Act, 1867;';

As per the above stated definition, the definition of the term "Print Media" is proposed to be restricted to Books and Newspaper as defined under Section 1(1) of the Press and Registration of Books Act, 1867. The same are reproduced as under:

"Book" *includes every volume, part or division of a volume, and pamphlet in any language and every sheet of music, map, chart or plan separately printed,*

"news papers" *means any printed periodical containing public news or comments on public news*

However, Books does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.

Thus, sale of space for advertisements in books or newspapers (as defined above) only shall be exempted from the levy of service tax vide clause (g) of Section 66D read with Section 66B of the Finance Act, 1994. However, sale of space in business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes, theatres, bill boards, mobile phones, internet, aerial advertising etc. shall be leviable to service tax.

2. Extension of levy of Service tax on services provided by way of transportation of passengers with or without accompanied belongings by radio taxi

Presently, services provided by way of transport of passengers with or without accompanied belongings by a stage carriage, railways, metro, monorail, inland waterways, public transport other than used for tourism purpose or metered cabs or ***radio taxi*** or auto rickshaws is exempted from the levy of service tax vide clause (o) of Section 66D of the Finance Act, 1994. The same reads as under:

(o) service of transportation of passengers, with or without accompanied belongings, by—

(i) a stage carriage;

(ii) railways in a class other than—

(A) first class; or

(B) an air conditioned coach;

(iii) metro, monorail or tramway;

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) ***metered cabs or radio taxi or auto rickshaws;***

Hon'ble Finance Minister, vide Finance Bill, 2014, has proposed to extend the levy of service tax to abovestated services provided by radio taxis (whether air conditioned or not) by deleting the word radio taxi from sub clause (vi) of clause (o) of Section 66D of the Finance Act, 1994. However, remaining entry remains the same. The proposed substituted sub clause (vi) reads as under:

(vi) metered cabs or auto rickshaws;

Thus, services provided by way of transportation of passengers with or without accompanied belongings by radio taxis shall be leviable to service tax with effect from enactment of Finance Bill, 2014.

Further, the definition of the term "radio taxi" has been inserted under clause (za) of the Paragraph 2 of the Notification No. 25/2012 dated 20.06.2012 vide Notification No. 6/2014 – ST dated 11.07.2014. The same reads as under:

"(za) "radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);"

In order to bring radio taxi service in par with renting of any motor vehicle to carry passengers service, it has also been proposed to provide an abatement of 60% in respect of services provided by way of transport of passengers with or without accompanied belongings by a radio taxi, vide Notification No. 26/2012 dated 20.06.2012 further amended by Notification No. 8/2014 – ST dated 11.07.2014. The said entry reads as under:

"9A	Transport of passengers, with or without accompanied belongings, by a. a contract carriage other than motorcab. b. Radio taxi	40	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.";

It is essential to highlight here that with effect from 01.10.2014, in case of renting of motor cab service (substituted for renting of motor vehicle to carry passengers vide Notification No. 8/2014 – ST dated 11.07.2014 with effect from 01.10.2014) , CENVAT Credit in respect of input services received from a person engaged in similar line of business, i.e. sub contractor providing services of renting of motor cab to main contractor shall be available to the assessee. However, no such provision has been proposed to introduce with respect to radio taxi service. In order to bring radio taxi service in par with renting of motor cab service, it would have been considered to propose to allow the radio taxi service providers to avail CENVAT Credit on the input service of another radio taxi provider. However, no such proposal has been made by legislature.

3. <u>Enactment of Rules to determine "rate of exchange" for the purposes of Section 67A-</u>

Earlier, the explanation to section 67A was as under:

"Explanation. *– For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the Explanation to section 14 of the Customs Act, 1962".*

Existing explanation to section 67 is substituted by following:

"Explanation- For the purposes of this section, "rate of exchange" means the rate of exchange determined in accordance with such rules as may be prescribed.

Substituted explanation to section 67 provides that rate of exchange shall be determined as per Rules made in this regard. For the same purposes section 94 of the Finance Act, 1994 is also amended accordingly.

<u>Changes applicable w.e.f. 01.09.2014</u>

1. Rule 4(1) & 4(7) of CENVAT Credit Rules, 2004 (W.e.f 01.09.2014)

<u>Six months time bar for availment of Cenvat Credit on input Rule 4(1):</u>

Presently, as per the provisions of **Rule 4 (1) of CENVAT Credit Rules, 2004;** CENVAT Credit of duty on inputs is available on after the receipt of inputs in the factory of the manufacturer or in the premises of the

provider of output service. In other words there was no time bar on availment of such CENVAT Credit after the receipt of such inputs.

However, Department vide **Notification No 21/2014-Central Excise (N.T.) dated 11.04.2014** has inserted a new proviso after the second proviso of rule (4) (1) of CENVAT Credit Rules, 2004 which has provided time limit with in which a provider of output service or a manufacturer can avail the CENVAT Credit on inputs. The said proviso has been reproduced as under:

"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub- rule (1) of rule 9."

As per aforesaid proviso a manufacturer or the provider of output service is not entitled to avail the CENVAT Credit of duty on inputs after six months of the date of document specified under Rule 9(1).

Six months time bar for availment of Cenvat Credit on input services 4(7):

According to **newly inserted fifth proviso to Rule 4(7)** it has been provided that the Cenvat credit of service tax paid in respect of input service shall not be allowed after the stipulated period of 6 months of the date of issue of duty paying document specified under Rule 9(1). In other words, assessee has to avail Cenvat credit within 6 months of the date of issue of duty paying document specified under Rule 9(1).

For instance, ABC Ltd. receive input service invoice amounting Rs. 1,12,600/- including service tax of Rs 12,600/- dated 05.09.2014 in the month of September, 2014. In the instant case, Cenvat credit of service tax of Rs 12,600/- can be availed on or before 04.03.2015.

Changes applicable w.e.f. 01.10.2014

1. Scope of Reverse Charge Mechanism has been widened [Amendment in Notification No. 26/2012-S.T. Dated 20.06.2012 Vide Notification No. 10/2014-ST Dated 11.07.2014]

Entry 7(b): Sub-clause (v)- with effect from 01.10.2014

The Government vide Notification No. 10/2014 dated 11th July 2014 has amended sub-clause (v) of Notification No. 26/2012-S.T. dated 20.06.2012. **The amended Entry is as under:**

7(b)	In respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar lien of business.	50%	50%

Prior to Notification No. 10/2014 dated 11th July 2014, the percentages of the service tax payable by the Service Provider and the Service Receiver was prescribed as 60% and 40% respectively, in case where service provider does not avail the abatement. The said percentages have been amended to 50% for Service Provider as well as for Service Receiver. This amendment has been made in order to simplify partial Reverse Charge Mechanism. However, where the said motor vehicle has been provided on abated value whole of the Service tax i.e. 100% shall be paid by Service Recipient and there is no change in that proposition. Further, the same has been made applicable from 01.10.2014 so as to coincide with the filing of Service tax Return for the period October to March '14 and to facilitate the Assessee.

2. Place of Provision Rules, 2012 (Notification no. 13/2014-ST dated 11.07.2014)

a) Rule 2(f): Definition of 'Intermediary':

(f) *"intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service)* ***[or a supply of goods,]*** *between two or more persons, but does not include a person who provides the main service* ***[or supplies the goods]*** *on his account.;*

Implication: Scope of 'Intermediary' expanded to include 'commission agent' of goods

According to Rule 9 of the Place of Provision Rules, 2012, place of provision in respect of services of 'intermediary' shall be location of service provider. Further definition of 'intermediary' as contained in Section 2(f) of the Place of Provision Rules, 2012 was limited to intermediary in respect of services only and intermediary in respect of goods (Commission Agent of goods i.e. procurement agent of goods or marketing agent of goods) was excluded from its scope.

However according to **Notification no. 14/2014-ST dated 11.07.2014** with effect from 01.10.2014, **definition of 'intermediary' is amended to include intermediary in respect of goods in its scope**. Accordingly, with effect from 1.10.2014, an intermediary of goods, such as a commission agent of goods shall be covered under Rule 9(c) of the Place of Provision of Services Rules, 2012. The effect of such amendment can be better understood with the following example:-

Practical Example

1. The liability of A, commission agent, who is engaged in facilitation of supply of goods shall be as follows:

S. No.	Situation	Taxable/Non Taxable
1.	**Situated within taxable territory** providing services to entity situated either in taxable territory or in non-taxable territory.	Taxable
2.	**Situated outside taxable territory** providing services to the entity situated either in taxable territory or in non-taxable territory.	Non Taxable

b) Rule 9: Place of provision of Specified Services:

w.e.f. 01.07.2012 to 30.09.2014

*0**9.** The place of provision of following services shall be the location of the service provider:-*

(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) Online information and database access or retrieval services;

(c) Intermediary services;

(d) Service consisting of hiring of means of transport, upto a period of one month.

w.e.f. 01.10.2014

09. The place of provision of following services shall be the location of the service provider:-

(a)…..

(d) Service consisting of hiring of all means of transport other than,-

(i) aircrafts, and

(ii) vessels except yachts,

upto a period of one month

Implication: Hiring of vessels and aircrafts shall be covered by general rule, which is place of location of service receiver.

According to Rule 9 of the Place of Provision Rules, 2012, the place of provision in respect of the services of providing on hire or lease, all means of transport shall be location of service provider. Therefore, those shipping companies which are situated in India were required to pay service tax and thus are losing business in a tough global scenario.

Thus on the representation of Indian Shipping Industry, an amendment has been brought up vide **Notification no. 14/2014-ST dated 11.07.2014,** wherein aircrafts and vessels (excluding yachts) will be excluded from Rule 9 of the Place of Provision Rules, 2012 and will be governed by Rule 3 of the Place of Provision Rules, 2012. **Consequently the place of provision in respect of hiring of aircrafts and vessels excluding yachts shall be location of the service recipient instead of location of service provider.** Thus a person giving an aircraft/vessel on hire to another person located in non-taxable territory shall not be liable to pay service tax.

c) Rule 4: Place of Provision of performance based services :

w.e.f 01.07.2012 to 30.09.2014

04. *The place of provision of following services shall be the location where the services are actually performed, namely:-*

(a) services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

(b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

w.e.f. 01.10.2014

04. *The place of provision of following services shall be the location where the services are actually performed, namely:-*

(a) services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this clause shall not apply in case of a services provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair.

(b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

Implication: Omission of Provision for prescribing conditions for determination of place of provision of repair service carried out on temporarily imported goods

According to Rule 4 of the Place of Provision Rules, 2012, place of provision of the services provided in respect of goods that are required to be made physically available by recipient of the service to the provider of service shall be location where the services are actually performed. Further as per 2nd proviso to Rule 4, those goods which are temporarily imported into India for repair, reconditioning or reengineering for re-export, shall not be covered under Rule 4 of the Place of Provision Rules, 2012 **subject to the compliance of certain conditions in this regard**. It is noteworthy to mention here that these conditions were not specified anywhere in the Finance Act, 1994.

Now an amendment has been brought up vide **Notification no. 14/2014-ST dated 11.07.2014 effective from 01.10.2014,** wherein provision of such conditions has been omitted. Now it would be sufficient for the purpose of exclusion of repair service from applicability of rule 4(a) that the goods imported for repair are exported after repair **without being put to any use** other than those which are required for such repair.

It may please be noted that this exclusion does not apply to goods that arrive in the taxable territory in the usual course of business and are subject to repair while such goods remain in the taxable territory, e.g., any repair provided in the taxable territory to containers arriving in India in the course of international trade in goods will be governed by rule 4.

3. **Bonanza for Tour Operators:**

Presently, if Tour Operators are discharging their Service Tax Liability after claiming abatement as per Notification No 26/2012 dated 20.06.2012, they are not eligible for availing CENVAT Credit of any Inputs, Input Services or Capital Goods used by them for providing their services.

However, vide Notification No 8/2014 dated 11.07,2014, for the words "input services" following words have been substituted:

"input services other than the input service of a tour operator"

Thus, as per aforesaid amendment it can be concluded that w.e.f. 01.10.2014, Tour Operators shall be eligible to avail the benefit of Input Services received by them from another Tour Operator.

It is pertinent to highlight here that by this amendment there shall arise a situation that if Tour Operator is receiving services from a Tour Operator who is discharging its Service Tax Liability without claiming abatement and tour operator itself is discharging its Service Tax Liability after claiming abatement as per Notification No 26/2012, in that case there shall be surplus credit available with the tour operator. Thus, a restriction as provided under Renting of Motorcab services is also required to be specified herein.

4. Point of Taxation Rules, 2011 (Notification no. 13/2014-ST dated 11.07.2014)

w.e.f. 01.04.2011 to 30.09.2014

a) **Rule 7: Determination of point of taxation in case of specified services or persons.—**

Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist:

Provided further that in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

w.e.f. 01.10.2014

Notwithstanding anything ***contained in rules 3, 4, or 8****, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of Section 68 of the Act, shall be the date on which payment is made:*

Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months:

Provided further that in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

Implication:

As per Rule 7 of the Point of Taxation Rules, 2011, point of taxation in respect of person who is required to pay tax as service recipient under section 68(2) of the Finance Act, 1994, shall be date on which payment is made. However, the first proviso to Rule 7 provides that if the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined in absence of this rule and accordingly shall be determined as per Rule 3 of these Rules.

According to **Notification no. 13/2014-ST dated 11.07.2014** with effect from 01.10.2014, if the payment is not made within a period of 3 months from the date of invoice then point of taxation shall be 1st day after three months from the date of invoice. However if the payment is made within 3 months of the date of invoice, then point of taxation shall be date of payment.

b) Rule 10 : New Rule inserted after Transitional Provisions (Rule 9)

10. Notwithstanding anything contained in the first proviso to rule 7, if the invoice in respect of a service, for which point of taxation is determinable under rule 7 has been issued before the 1st day of October, 2014 but payment has not been made as on the said day, the point of taxation shall,–

(a) if payment is made within a period of six months of the date of invoice, be the date on which payment is made;
(b) if payment is not made within a period of six months of the date of invoice, be determined as if rule 7 and this rule do not exist.

Implication

This new rule shall be applicable only to the invoices which are issued after 01.10.2014. According to this rule, in case the service recipient makes the payment within 6 months from the date of invoice then the liability towards service tax will arise on payment. However, in case the payment is not made within 6 months then the liability will arise on the first day after three months from the date of invoice.

The aforementioned amendments can be better understood with the help of following example:-

Practical Example:

XYZ Enterprises receive consulting engineer's services from ABC and Associates of USA on 15.10.2014 for $ 200,000. ABC and Associates raises the invoice for the aforesaid amount on 20.10.2014. XYZ Enterprises make payment as follows:

(a) 20.11.2014
(b) 20.02.2015

Point of taxation in each of the above two cases shall be as under:

(a) Point of Taxation shall be – Date of Payment i.e. 20.11.2014. Since XYZ Enterprises makes the payment on 20.11.2014 i.e. within 3 months from the date of invoice, provisions of Rule 7 shall be applicable and accordingly date on which payment is made will be considered as Point of Taxation.
(b) Point of Taxation shall be – 1st day after the three months from the date of invoice i.e. 20.01.2015. As XYZ Enterprises does not make the payment within 3 months from the date of invoice, first proviso of Rule 7 shall be applicable and accordingly 1st date after 3 months from the date of invoice shall be considered as Point of taxation.

Continuing the above example if the invoice is raised by ABC and Associates on 30.09.2014 and the payment is made as under:

(a) 20.11.2014
(b) 20.02.2015
(c) 20.04.2015

(a) Point of Taxation shall be – Date of Payment i.e. 20.11.2014. Since XYZ Enterprises makes the payment on 20.11.2014 i.e. within 6 months from the date of invoice, provisions of Rule 10 shall be applicable and accordingly date on which payment is made will be considered as Point of Taxation.
(b) Point of Taxation shall be – Date of Payment i.e. 20.02.2015. Since XYZ Enterprises makes the payment on 20.02.2015 i.e. within 6 months from the date of invoice, provisions of Rule 10 shall be applicable and accordingly date on which payment is made will be considered as Point of Taxation.
(c) Point of Taxation shall be – 1st day after the six months from the date of invoice i.e. 30.03.2015. As XYZ Enterprises does not make the payment within 6 months from the date of invoice, Rule 7 and Rule 10 shall not be applicable and accordingly 30.09.2014 shall be considered as point of taxation.

5. Payment of Service Tax (Rule 6 of Service Tax Rules, 1994) (Notification No. 09/2014 dated 11.07.2014.)

Rule 6 has been amended so as to make e-payment of service tax mandatory for all service tax payers. However, Dy. Commissioner/Asstt. Commissioner may grant relaxation towards e-payment on case to case basis.

6. Amendment in Rule 2A of Service Tax (Determination of Value), Rules 2006:-

Presently, as per the provisions of Rule 2A(ii) of Service Tax (Determination of Value), Rules, 2006, value of Service portion in case of Works Contract Services is determined as under:

a) In case of Original Works :- 40% of Total Amount Charged

b) In case of Maintenance or repair or reconditioning of Goods:- 70% of Total Amount Charged
c) In respect of Works Contract other than mentioned above including maintenance, repair, completion, finishing of Immovable Property:- 60% of Total Amount Charged

However, Notification No 11/2014 dated 11.07.2014 has merged the aforesaid clause (b) and clause (c) into one single clause. **In other Words, w.e.f. 01.10.2014, Service Portion in respect of all Works Contracts other than Works Contract entered into for Original Works shall be 70% of Total Amount Charged and accordingly Service Tax shall be applicable on 70% of Gross Amount Charged.**

In view of author, the aforesaid amendment has been brought in order to avoid the dispute of classification between the aforesaid two categories.

7. Increase in abatement provided to Services provided in respect of Transport of Goods in a vessel (Amendment Entry 10 of Notification No 26/2012 dated 20.06.2012):-

Currently, an abatement of 50 % has been provided to "Services in respect of transport of goods in a vessel" vide Notification No 26/2012 dated 20.06.2012. However, vide **Notification No 08/2014 dated 11.07.2014**, such abatement has been increased to 60% of Gross Amount Charged. In other Words, w.e.f. 01.10.2014, any person providing services in respect of transport of goods by a vessel shall be liable to discharge Service Tax Liability only on 40% of Gross Amount Charged provided other conditions of Notification No 26/2012 dated 20.06.2012 have been satisfied.

8. Increase in Interest Rate in case of delayed payment of Service Tax:-

Currently, interest @18% under Section 75 is charged if Service Tax liability is not discharged as per the time limits prescribed under Rule 6 of Service Tax Rules, 1994. However, the said rate of interest has been revised vide **Notification No 12/2014 dated 11.07.2014.** The new revised rates of interest for the purpose of Section 75 of Finance Act, 1994 have been specified as under:

S. No	Period Of Delay	Rate of Simple Interest
1.	Upto Six Months	18%
2.	More than six months and upto one Year	18% for the first six months and 24% for the delay beyond 6 Months
3.	More than One Year	18% for the first six months; 24% for the period beyond six months upto one year and 30% for any delay beyond one year

It is pertinent to highlight here that the aforesaid time limits have been prescribed on monthly basis whereas interest is required to be computed on per day basis. In order to have a better understanding of the aforesaid interest rates, the following illustration has been provided:

For Instance: M/s ABC Pvt. Ltd discharges its Service Tax Liability amounting to Rs 1,00,000 for the Month of July 2014 on 25 August 2015. In that case, amount of interest required to be paid by M/s ABC Pvt. Ltd shall be computed as under:

The due date of discharging Service Tax Liability in the aforesaid case shall be 06th August 2014. Thus, interest is required to be computed for the period 07th August 2014 to 25th August 2015.

Interest for the period 07.08.2014 to 06.02.2015 = 1,00,000*18%*184/365
= 9,074
Interest for the period 07.02.2015 to 06.08.2015 = 1,00,000*24%*181/365

= 11,901

Interest for the period 07.08.2015 to 25.08.2015 = 1,00,000*30%*19/365

= 1,562

Thus, the total Interest shall be:- 9,074 + 11,901 + 1,562 = 22,537

It is further highlighted here that presently assessee are discharging their Service Tax Liability as per the Point of Taxation Rules, 2011, thus assessee are already under financial burden as they have to discharge their Service Tax Liability without realization of payment. The increase in the rates of interest shall further put an additional burden on the assessee.

9. Restriction in the scope of abatement provided in case of Renting of Motor Vehicle Services and extended benefit of CENVAT Credit (Changes in abatement Notification No 26/2012 dated 20.06.2012):

Currently, an abatement of 60% has been provided to Services provided in respect of Renting of Motor vehicle designed to carry passenger. However, vide Notification No 08/2014 dated 11.07.2014 the said abatement has been restricted only in respect of the Renting of Motorcabs.

Further, the term 'Motor Cab' has not been defined under Finance Act, 1994, accordingly reference can be taken from the Motor Vehicle Act, 1939 wherein the said term has been defined. The term 'Motorcab' has been has been defined under Clause 2(25) of Motor Vehicle Act, 1939 as under:

> ***"motorcab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward.***

As per the aforesaid definition, Motorcab shall mean any motor vehicle which is designed to carry not more than six passengers excluding the driver. Further, the term 'Motor Vehicle' has been defined under Clause 2(28) of Motor Vehicles Act, 1939 as under:

> ***"(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters"***

On a careful analysis of the aforesaid definitions of Motor Vehicles and Motorcab, it can be concluded that vide the aforesaid amendment the scope of abatement provided vide Entry No 9 of Notification No 26/2012 has been restricted only in respect of renting of motor vehicle which can carry upto 6 passengers only i.e. renting of motor vehicles are designed to carry more than 6 passengers shall be Taxable at full rate and benefit of abatement shall not be available.

Availment of CENVAT Credit in respect of services of renting of Motorcab:-

Currently, a Service Provider, providing services of Renting of Motor Vehicle, who is claiming abatement as per Notification No 26/2012 dated 20.06.2012 is not entitled to avail CENVAT Credit in respect of Input, Input Services and Capital Goods. However, vide **Notification No 08/2014 dated 11.07.2014**, benefit of CENVAT Credit of Input Services received in respect of Renting of Motorcab has also been extended to Service provider,

who is providing Renting of Motorcab services, while claiming abatement as per Notification No 26/2012 dated 20.06.2012. The said CENVAT Credit shall be available in the following manner:

Condition	Quantum of CENVAT Credit
Services received from a person who is paying Service Tax after availing benefit of abatement.	Full CENVAT Credit Available
Services received from a person who is discharging Service Tax liability without claiming abatement i.e. on full value	Upto 40% of CENVAT Credit available.

Retrospective changes

Service provided by Employees State Insurance Corporation (ESIC) – prior to 01.07.2012.

Services provided by Employees State Insurance Corporation (ESIC) prior to 01.07.2012 have been proposed to be retrospectively exempted. This exemption for services by ESIC would come into effect from the date of enactment of bill.