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CLAUSEWISE BRIEF ANALYSIS OF BUDGET 2012 IN RESPECT OF FINANCE ACT, 1994

S. NO.	CLAUSE NO.	SECTION	DATE OF APPLICABILITY	BRIEF OF PROVISION
1	143(A)	65: Definitions (Old)	Date to be notified by Central Government	Section 65 defines various terms under old scheme and under new scheme all the services are taxable except those given in negative list. In this regard, new section for definitions is being inserted i.e., section 65B and section 65 will be withdrawn as soon as the new scheme would be applicable.
2	143(B)	65A(3): Classification (Old)	DO	Classification of taxable services would no longer be required in view of introduction of new scheme.
3	143(C)	65B: Definitions (New)	DO	This new section of definitions defines number of relevant terms (i.e., 55) which were not defined earlier.
4	143(D)	66: Charging Section (Old)	DO	Now this charging section would not apply and new charging section is 66B.
5	143(E)	66A(3) Reverse Charge (Old)	DO	New provisions has been proposed in new scheme of service tax, thereby old provision related with reverse charges mechanism given in this section would not apply.
6	143(F)	66B: Charging Section (New)	DO	This section seeks to levy service tax at the rate of 12% on the value of all services, except services specified in the negative list (in section 66D). These services would be chargeable to tax if these are provided by any person to any person.

		66C: Taxing Jurisdiction (New)	DO	Proposed section 66C seeks to empower the Central Government to make rules which will contain principles on the basis of which taxing jurisdiction of a service can be determined. These rules would be known as Place of Provision of Services Rules, 2012.
		66D: Negative list (New)	DO	This list covers 15 services.
		66E: Declared Services (New)	DO	This list covers 9 services.
		66F	DO	Proposed section 66F seeks to provide for principles of interpretation of specified descriptions of services or bundled services.
7	143(G)	Clause (b) of Explanation to Sec 67	DO	Section 65B (33) of new scheme defines the meaning of "Money" that is why same has been omitted from the said clause of existing law.
8	143(H)	67A: Determination of rate of tax etc.	The date on which this Bill receives the assent of the President.	It is proposed to insert new section 67A, which provides that date of determination of rate of tax, value of taxable service and rate of exchange will be the time when taxable services has been provided or agreed to be provided.
9	143(I)	68 (2) : Reverse Charge (Old)	DO	Section 68(2) of the Finance Act, 1994 is being amended to put the onus of payment of service tax on reverse charge basis partly on service provider and partly on service receiver. The scheme is proposed to be made applicable on three specific services i.e. hiring of means of transport; construction and man power supply.
10	143(J)	72A: Special Audit (New)	DO	Provisions relating to special audit are inserted in the service tax law on the lines of Section 14A and section 14AA of the Central Excise Act, 1944.

11	143(K)	73: Recovery of Service Tax (Old)	DO	Notices for recovery of Service Tax not levied or not paid or short levied or short paid or erroneously refunded can now be issued within a period of 18 months from relevant date, earlier this period was 12 months.
12	143(L)	80: Penalty not to be imposed in certain cases (Old)	DO	By amending this section now provider of "Renting of Immoveable Property Service" has been given the benefit of not to pay penalty in respect of service tax payable as on 06.03.2012 if they deposit the same along with interest within 6 months from the date of enactment of the Finance Bill, 2012.
13	143(M)	83: Application of certain provisions of Act 1 of 1944 (Old)	DO	Section 83 is being amended to make Settlement Commission provisions applicable to service tax in line with the similar provisions contained in sections 31, 32, 32A to 32P of the Central Excise Act, 1944.
14	143(N)	85: Appeals to the Commissioner (Appeals) (Old)	DO	Period of limitation for filing an appeal application to Commissioner of Central excise (Appeals) has been reduced from a period of 3 months to 2 months.
15	143(O)	86: Appeals to Appellate Tribunal (Old)	DO	Committee of Commissioner or Committee of Chief commissioners may direct Central Excise Officer or commissioner of central excise respectively to file an appeal in appellate tribunal within a period of 4 months. (Earlier it was 3 months).
16	143(P)	88: First Charge on Property (Old)	DO	For the word "duty", the word "tax" shall be substituted.
17	143(Q)	89: Prosecution Provision (Old)	DO	Earlier, inter alia, assessee was punishable for imprisonment if services were rendered without issue of an invoice, now would be punishable for imprisonment if assessee knowingly evades payment of Service Tax.
18	143(R)	93A: Power to grant Rebate (Old)	DO	This section is amended so as to provide that Central Government may grant rebate of service tax paid on

				taxable services which are used as inputs even after the stage of manufacture, processing or removal.
19	143(S)	93B: Applicability of rules made under section 94 (New)	DO	This section provides that all the rules made under Section 94 and applicable to taxable services shall also be applicable to services other than taxable services
20	143(T)	94: Power to make rules (Old)	DO	Central Government. is now empowered to make rules in relation to:- 1)compounding of offences 2) settlement of cases
21	143(U)	95(1-I):Power to CG to give effect to the amendment by Finance Act, 2012 (New)	DO	Central Government is now empowered to issue orders for removal of difficulty in case of applicability of new service tax provisions relating to Negative List. This power can be exercised by central Government up to 2 years from the date of enactment of the Finance Bill, 2012.
22	143(V)	96C: Application for advance ruling (Old)	DO	Earlier application for advance ruling could be made in case of admissibility of Service Tax Credit. However now this admissibility of credit would be subject to rules which are prescribed here under. These rules are not formed till now & would be prescribed after Finance Bill, 2012 becomes law.
23	143(W)	97: Exemption in respect of management, maintenance or repair of roads (New)	DO	These new sections are being inserted to extend service tax exemption retrospectively by way of claiming refund for repair of roads and non -commercial Government buildings for the period specified in the respective sections.
		98: Exemption in respect of management, maintenance or repair of Non Commercial	Do	

		Government Building (New)		
24	144	Amends rule 6(6A) of CCR, 2004.	10.02.2006	The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone or to a Developer of a Special Economic Zone for their authorised operations.
25	145	Granting exemption from the whole of service tax leviable under section 66 thereof on the club or association service.	16.06.2005	Granting exemption from the whole of service tax leviable under section 66 thereof, on the club or association service referred to in sub-clause (zzze) of clause (105) of section 65 of the said Act, provided by a club or an association including registered cooperative societies, in relation to the project by way of refund.

BRIEF ANALYSIS OF NOTIFICATIONS ISSUED ALONGWITH BUDGET 2012 IN RESPECT OF FINANCE ACT, 1994

S. NO.	NOTIFICATION NO AND DATE	PARTICULRS	Date of Applicability	Briefing of Amendment
1	NN 01 2012 ST DATED 17.01.2012	Amends NN 42 2011 Exempts Club or Association Services	17.03.2012	Earlier this exemption was available to association of dying units only now it is available to all association including registered cooperative societies in respect of specified project.
2	NN 02 2012 ST DATED 17.01.2012	Rescinds NN 08 2009 Reduced service tax rate from 12% to 10%	01.04.2012	Now this notification has been rescinded and wef 01.04.2012 service tax shall be paid @ 12%. Now suitable steps should be taken upto 31.03.2012 to save tax liability due to increased rate. For this, read our analysis in respect of POT Rules, 2011.
3	NN 03 2012 ST DATED 17.01.2012	Amends STR, 1994	Do	Amends rule 2, 4A and 6 of Service Tax Rules, 1994.
4	NN 04 2012 ST DATED 17.01.2012	Amends POT, RULES 2011	Do	Amended Point Of Taxation Rules, 2011
5	NN 05 2012 ST DATED 17.01.2012	Amends NN 06 2005	Do	Definition of aggregate value has been amended. Now under the said notification assessee need not to pay service tax in current financial year for first consecutive invoices issued or required to be issued . Before this amendment benefit was available in respect of receipts of payment and after introduction of POT Rules, 2011, it was become necessary to amend the same. Now it is resolved.
6	NN 06 2012 ST DATED	Supersede NN 26	Do	Now in respect of aircraft operator services, 60% of the value shall not

	17.01.2012	2010		be taxable.
7	NN 07 2012 ST DATED 17.01.2012	Amends NN 07 2010		NN 07 2010 rescinded NN 33 2009 which exempts the taxable service provided to any person in relation to transport of goods by rail by government railway, in relation to transport of goods in containers by rail. NN 33 2009 had been rescinded wef 01.04.2010 by NN 07 2010 but now this time limit has increased to 01.07.2010.
8	NN 08 2012 ST DATED 17.01.2012	Amends NN 08 2010		NN 08 2010 exempts the taxable service provided to any person in relation to transport of specified goods by rail wef 01.04.2010. After this amendment the NN 08 2010 would be applicable wef 01.07.2010.
9	NN 09 2012 ST DATED 17.01.2012	Amends NN 09 2010		NN 09 2010 substitute words Transport of goods by rail in column 3 against S. no. 11 of Table in NN 01 2006 wef 01.04.2010. Now it would be effective from 01.07.2010
10	NN 10 2012 ST DATED 17.01.2012	Amends Composition Scheme	01.04.2012	Rate of service tax has been increased from 4% to 4.80% for works contractor opted for composition scheme.
11	NN 11 2012 ST DATED 17.01.2012	Amends ST (DOV) RULES 2006	Date to be notified by Central Government	Substantially amended Service Tax (Determination of Value) Rules, 2006
12	NN 12 2012 ST DATED 17.01.2012	Wholly Exempts Services	Do	This notification specified 34 services which are exempted from the whole of the service tax leviable thereon under section 66 B. Here an attempt has been made to specify all the services which were earlier exempted through various special exemption notification under various head of services.
13	NN 13 2012 ST DATED 17.01.2012	Abatement	Do	This notification provides abatement in respect of 11 services provided in this notification subject to certain conditions. Earlier most of these services was covered by abatement NN 01/2006 ST Dated 01.03.2006.

14	NN 14 2012 ST DATED 17.01.2012	Exempt Amount Of R&D Cess On Import Of Technology	Do	Exempts the taxable service involving import of technology, from so much of the service tax leviable thereon under section 66B of the said Act, as is equivalent to the amount of cess payable on the said import of technology under the provisions of section 3 of the Research and Development Cess Act, 1986 (32 of 1986), subject to the specified conditions.
15	NN 15 2012 ST DATED 17.01.2012	Supersede NN 36 2004 (Specified persons liable to pay service tax in terms of provision of section 68 (2).	Do	Now NN 15 2012 has superseded NN 36 2004 and it notifies the taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of section 68 (2).

NOW SERVICES CAN BE CLASSIFIED UNDER THE FOLLOWING CATEGORIES:

1. **Main services** i.e. which are known as **taxable services** under section 66B.
2. Services which are given in **negative list** under section 66D i.e. these are the services which are out of service tax net.
3. Services which are classified as **declared services** under section 66E. (**We hope that in respect of these services soon Government will make some rules and provide benefits in any way to the service provider**).
4. Services which are **wholly exempted** if provided by any person to any person as per NN 12 2012 ST DATED 17.01.2012.
5. Service in respect of which **abatement** is available as per NN 13 2012 ST DATED 17.01.2012
6. Services in respect of which **service tax is payable by either receiver of services** or receiver of services as well as provider of services as per NN 15 2012 ST DATED 17.01.2012.
7. Services in respect of which option to pay service tax under **Composition Scheme** is available.
8. Services in respect of which **option under Rule 6** is available to pay services tax at concessional rate.

REFUNDS AVAILABLE AFTER AMENDMENT BY FINANCE BILL, 2012:

After amendment by above bill following kinds of refunds can be claim within the specified time limit. Therefore those who are eligible for these refunds should take immediate and effective steps to get the same.

S. No.	Section or Rule	Particulars	Time Limit and Conditions
1	97	Exemption in respect of management, maintenance or repair of roads .	If any service tax has been paid in respect of such services during 16.06.2005 to 26.07.2009 (both days inclusive) then in respect of same, assessee may make refund application within 6 months from the date this finance bill get assent of president of India.

2	98	Exemption in respect of management, maintenance or repair of Non Commercial Government Building.	If any service tax has been paid in respect of such services during the period on and from the 16th day of June, 2005 till the date on which section 66B comes into force then in respect of same assessee may make refund application within 6 months from the date this finance bill get assent of president of India.
3	Rule 6(6A) of CCR, 2004.	Amends rule 6(6A) of CCR, 2004.	We hope that soon Government will make rules in respect of same.
4	Clause 145 of Finance Bill 2012	Granting exemption from the whole of service tax leviable under section 66 thereof on the club or association service.	<p>The notification number G.S.R. 566 (E), dated the 25th July, 2011, issued in exercise of the powers conferred by section 93(1) of the Finance Act, 1994, granting exemption from the whole of service tax leviable under section 66 thereof, on the club or association service referred to in sub-clause (zzze) of clause (105) of section 65 of the said Act, provided by a club or an association including registered cooperative societies, in relation to the project, shall be deemed to have, and deemed always to have, for all purposes, validly come into force on and from the 16th day of June, 2005, at all material times.</p> <p>After above amendment now one can file refund claim application in respect of service tax paid on above services from 16.06.2005 to 25.07.2011 within 6 months from the date this finance bill get assent of president of India.</p>

ANNEXURE-A

CHAPTER V SERVICE TAX

143. In the Finance Act, 1994,—

(A) in section 65, after the Explanation occurring at the end of clause (121), the following proviso shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

"Provided that the provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.";

(B) in section 65A, after sub-section (2), the following sub-section shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

"(3) The provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.";

(C) after section 65A, the following section shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

'65B. In this Chapter, unless the context otherwise requires,—

(1) "actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882;

(2) "advertisement" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;

(3) "agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;

(4) "agricultural extension" means application of scientific research and knowledge to agricultural practices through farmer education or training;

(5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

(6) "Agricultural Produce Marketing Committee or Board" means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce;

(7) "aircraft" has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934;

(8) "airport" has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994;

(9) "amusement facility" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided;

(10) "Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962;

(11) "**approved vocational education course**" means,—

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or

(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; or

(iii) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India;

(12) "**assessee**" means a person liable to pay tax and includes his agent;

(13) "associated enterprise" shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961;

(14) "**authorised dealer of foreign exchange**" shall have the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999;

(15) "betting or gambling" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring;

(16) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

(17) "business entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business;

(18) "Central Electricity Authority" means the authority constituted under section 3 of the Electricity (Supply) Act, 1948;

(19) "Central Transmission Utility" shall have the meaning assigned to it in clause (10) of section 2 of the Electricity Act, 2003;

(20) "courier agency" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;

(21) "customs station" shall have the meaning assigned to it in clause (13) of section 2 of the Customs Act, 1962;

(22) "declared service" means any activity carried out by a person for another person for consideration and declared as such under section 66E;

(23) "electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may

be, the State Government;

(24) "entertainment event" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme;

(25) "goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(26) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

(27) "India" means,—

(a) the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

(28) "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment;

(29) "inland waterway" means national waterways as defined in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917;

(30) "interest" has the meaning assigned to it in clause (28A) of section 2 of the Income-tax Act, 1961;

(31) "local authority" means-

(a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;

(b) a Municipality as referred to in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;

(f) a development board constituted under article 371 of the Constitution; or

(g) a regional council constituted under article 371A of the Constitution;

(32) "metered cab" means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder;

(33) "money" means Indian legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for

its numismatic value;

(34) "negative list" means the services which are listed in section 66D;

(35) "non-taxable territory" means the territory which is outside the taxable territory;

(36) "notification" means notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;

(37) "person" includes,—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a society,

(v) a limited liability partnership,

(vi) a firm,

(vii) an association of persons or body of individuals, whether incorporated or not,

(viii) Government,

(ix) a local authority, or

(x) every artificial juridical person, not falling within any of the preceding sub-clauses;

(38) "port" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963 or in clause (4) of section 3 of the Indian Ports Act, 1908;

(39) "prescribed" means prescribed by rules made under this Chapter;

(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 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;

(41) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;

(42) "Reserve Bank of India" means the bank established under section 3 of the Reserve Bank of India Act, 1934;

(43) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956;

(44) "**service**" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.— For the purposes of this Chapter,—

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 3.— A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

(45) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

(46) "stage carriage" shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988;

(47) "State Electricity Board" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948;

(48) "State Transmission Utility" shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003;

(49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;

(50) "tax" means service tax leviable under the provisions of this Chapter;

(51) "**taxable service**" means any service on which service tax is leviable under section 66B;

(52) "taxable territory" means the territory to which the provisions of this Chapter apply;

(53) "vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963;

(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, improvement, repair, renovation, alteration of any building or structure on land or for carrying out any other similar activity or a part thereof in relation to any building or structure on land;

(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.'.

(D) in section 66, the following proviso shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

"Provided that the provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.";

(E) in section 66A, after Explanation 2 occurring at the end of sub-section (2), the following subsection shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

"(3) The provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.";

(F) after section 66A, the following sections shall be inserted with effect from such date as the Central Government may, by notification, appoint, namely:—

66B. There shall be levied a tax (hereinafter referred to as the service tax) at the **rate of twelve per cent.** on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

66C. (1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

(2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

66D. The negative list shall comprise of the following services, namely:—

(a) **services by Government or a local authority** excluding the following services to the extent they are not covered elsewhere—

(i) services by the Department of Posts by way of **speed post, express parcel post, life insurance and agency services provided to a person other than Government;**

(ii) services in relation to **an aircraft or a vessel**, inside or outside the precincts of a port or an airport;

(iii) transport of **goods or passengers;** or

(iv) **support services**, other than services covered under clauses (i) to (iii) above, provided to business entities;

(b) services by the **Reserve Bank of India;**

(c) services by a **foreign diplomatic mission located in India;**

(d) services relating to **agriculture** by way of—

(i) agricultural operations **directly related to production** of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;

(ii) supply of **farm labour**;

(iii) processes carried out at an **agricultural farm** including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of **agro machinery or vacant land** with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of **agricultural produce**;

(vi) **agricultural extension services**;

(vii) services by **any Agricultural Produce Marketing Committee or Board or services provided by a commission agent** for sale or purchase of agricultural produce;

(e) **trading of goods**;

(f) **any process amounting to manufacture** or production of goods;

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

(h) service by way of **access to a road or a bridge on payment of toll charges**;

(i) **betting, gambling or lottery**;

(j) admission to **entertainment events or access to amusement facilities**;

(k) transmission or distribution of **electricity** by an electricity transmission or distribution utility;

(l) services by way of—

(i) **pre-school education and education up to higher secondary school or equivalent**;

(ii) education as a part of a curriculum for **obtaining a qualification recognised** by any law for the time being in force;

(iii) education as a part of an **approved vocational education course**;

(m) services by way of **renting of residential dwelling for use as residence**;

(n) services by way of—

(i) extending **deposits, loans or advances** in so far as the consideration is represented by way of interest or discount;

(ii) **inter se sale or purchase of foreign currency amongst banks or authorised dealers** of foreign exchange or amongst banks and such dealers;

(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 airconditioned coach;

(iii) metro, monorail or tramway;

(iv) inland waterways;

(v) **public transport**, other than **predominantly for tourism purpose**, in a vessel of less than fifteen tonne net; and

(vi) metered cabs, radio taxis or auto rickshaws;

(p) services by way of **transportation of goods**—

(i) by road except the services of—

(A) a goods transportation agency; or

(B) a courier agency;

(ii) by an aircraft or a vessel from a **place outside India** to the first customs station of landing in India; or

(iii) by inland waterways;

(q) **funeral, burial, crematorium or mortuary services** including transportation of the deceased.

66E. The following shall constitute **declared services**, namely:—

(a) renting of **immovable property**;

(b) **construction of a complex, building, civil structure or a part** thereof, including a complex or building 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.

Explanation.— For the purposes of this clause,—

(I) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of nonrequirement of such certificate from such authority, from any of the following, namely:—

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any **intellectual property right**;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of **information technology software**;

(e) agreeing to the **obligation to refrain from an act**, or to tolerate an act or a situation, or to do an act;

(f) **transfer of goods** by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;

(g) **activities in relation to delivery of goods** on hire purchase or any system of payment by instalments;

(h) service portion in the **execution of a works contract**;

(i) **service portion in an activity** wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

66F. (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.

(2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

(3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely:—

(a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation.— For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.';

(G) in section 67, in the Explanation, clause (b) shall be omitted, with effect from such date as the Central Government may, by notification, appoint;

(H) after section 67, the following section shall be inserted, namely:—

'67A. The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

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.';

(I) in section 68, in sub-section (2), with effect from such date as the Central Government may, by notification, appoint,—

(i) for the words "any taxable service notified", the words "such taxable services as may be notified" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.";

(J) after section 72, the following section shall be inserted, namely:—

'72A. (1) If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person"),—

(i) has failed to declare or determine the value of a taxable service correctly; or

(ii) has availed and utilised credit of duty or tax paid-

(a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or

(b) by means of fraud, collusion, or any wilful misstatement or suppression of facts; or

(iii) has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner, he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

(2) The chartered accountant or cost accountant referred to in sub-section (1) shall, within the period specified by the said Commissioner, submit a report duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified by him.

(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force.

(4) The person liable to pay tax shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilised in any proceeding under the provisions of this Chapter or rules made thereunder.

Explanation.— For the purposes of this section,—

(i) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section

(1) of section 2 of the Chartered Accountants Act, 1949;

(ii) "cost accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959.;

(K) in section 73,—

(i) for the words "one year", wherever they occur, the words "eighteen months" shall be substituted;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Notwithstanding anything contained in sub-section (1), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.";

(iii) in sub-section (4A), for the words, brackets and figures "sub-sections (3) and (4)", the word, brackets and figure "sub-section (4)" shall be substituted;

(L) section 80 shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) Notwithstanding anything contained in the provisions of section 76 or section 77 or section 78, no penalty shall be imposable for failure to pay service tax payable, as on the 6th day of March, 2012, on the taxable service referred to in sub-clause (zzzz) of clause (105) of section 65, subject to the condition that the amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.";

(M) in section 83, for the figures and letters "12E, 14, 14AA, 15, 33A, 34A, 35F", the figures, letters, words and brackets "12E, 14, 15, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F" shall be substituted;

(N) in section 85,—

(i) in sub-section (3), after the words "under this Chapter", the words and figures ", made before the date on which the Finance Bill, 2012 receives the assent of the President" shall be inserted;

(ii) after sub-section (3), the following sub-section shall be inserted, namely:—

"(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.";

(O) in section 86,—

(i) in sub-section (1), after the words "against such order", the words "within three months of the date of receipt of the order" shall be inserted;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every appeal under sub-section (2) or sub-section (2A) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners or, as the case may be, the Committee of Commissioners.";

(P) in section 88, for the word "duty", the word "tax" shall be substituted;

(Q) in section 89, in sub-section (1), for clause (a), the following clause shall be substituted with effect from the date on which the Finance Bill, 2012 receives the assent of the President, namely:—

"(a) knowingly evades the payment of service tax under this Chapter; or";

(R) in section 93A, for the words "of such goods", the words "or removal or export of such goods" shall be substituted;

(S) after section 93A, the following section shall be inserted, namely:—

"93B. All rules made under section 94 and applicable to the taxable services shall also be applicable to any other service in so far as they are relevant to the determination of any tax liability, refund, credit of service tax or duties paid on inputs and input services or for carrying out the provisions of Chapter V of the Finance Act, 1994.";

(T) in section 94, in sub-section (2),—

(i) clause (ee) shall be omitted;

(ii) in clause (hhh), after the words "provision of taxable service", the words, figures and letter "under section 66C" shall be inserted;

(iii) clause (i) shall be re-lettered as clause (k) thereof and before the clause (k) as so relettered, the following shall be inserted, namely:—

"(i) provide for the amount to be paid for compounding and the manner of compounding of offences;

(j) provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in Chapter V of the Central Excise Act, 1944 as made applicable to service tax vide section 83;";

(U) in section 95, after sub-section (1H), the following sub-section shall be inserted, namely:—

"(1-I). If any difficulty arises in giving effect to section 143 of the Finance Act, 2012, in so far as it relates to insertion of sections 65B, 66B, 66C, 66D, 66E and section 66F in Chapter V of the Finance Act, 1994, the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, make such provisions, as may be necessary or expedient for the purpose of removing the difficulty from such date, which shall include the power to give retrospective effect from a date not earlier than the date of coming into force of the Finance Act, 2012:

Provided that no such order shall be made after the expiry of a period of two years from the date of coming into force of these provisions.";

(V) in section 96C, in sub-section (2), for clause (e), the following clause shall be substituted, namely:—

"(e) admissibility of credit of duty or tax in terms of the rules made in this regard;"

(W) after section 96J, the following sections shall be inserted, namely:—

"97. (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of **roads**, during the period on and from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive).

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.

98. (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of **non-commercial Government buildings**, during the period on and from the 16th day of June, 2005 till the date on which section 66B comes into force.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President."

144. (1) In the CENVAT Credit Rules, 2004, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944, sub-rule (6A) of rule 6 as inserted by clause (ix) of rule 5 of the CENVAT Credit (Amendment) Rules, 2011, published in the Official Gazette vide notification of the Government of India in the Ministry of Finance (Department of Revenue) number

G.S.R. 134(E), dated the 1st March, 2011 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in column (2) of the Eighth Schedule, on and from the date specified in column (3) of that Schedule, against the rule specified in column (1) of that Schedule.

(2) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done, on and from the 10th day of February, 2006, relating to the provisions as amended by sub-section (1), shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done as if the amendments made by sub-section (1) had been in force at all material times.

(3) For the purpose of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, 1944, retrospectively, at all material times.

145. (1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 566 (E), dated the 25th July, 2011, issued in exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, granting exemption from the whole of service tax leviable under section 66 thereof, on the club or association service referred to in sub-clause (zzze) of clause (105) of section 65 of the said Act, provided by a club or an association including registered cooperative societies, in relation to the project, shall be deemed to have, and deemed always to have, for all purposes, validly come into force on and from the 16th day of June, 2005, at all material times.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected as if the notification referred to in sub-section (1) had been in force at all material times.

(3) Notwithstanding anything contained in the Finance Act, 1994, an application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2012 receives the assent of the President.

Explanation.—For the removal of doubts, it is hereby declared that,—

(i) project means common facility set-up for treatment and recycling of effluents and solid wastes, with financial assistance from the Central Government or a State Government;

(ii) the provisions of section 11B of the Central Excise Act, 1944, shall be applicable in case of refunds under this section.

ANNEXURE-B

Memorandum 2 of Finance Bill, 2012

SERVICE TAX

I. RATE OF SERVICE TAX:

- 1) The rate of service tax is being increased from 10% to 12%.
- 2) Consequent to change in the rate of service tax, changes are also being made in specific and compounding rates of tax for the following:
 - a) Service in relation to purchase and sale of foreign currency including money changing;
 - b) Service of promotion, marketing, organizing or in any manner assisting in organizing lottery;
 - c) Works contract service;
 - d) Reversal of cenvat credit under rule 6(3)(i).
- 3) Life insurance service: Where the entire premium is not towards risk cover, the first year's premium shall be taxed at the rate of three per cent. while subsequent premia shall attract tax at the rate of 1.5 per cent. Availment of full cenvat credit is being allowed.
- 4) Transport of passengers embarking in India for domestic and international journey by air : The dual rate structure of maximum service tax of Rupees 150 and Rupees 750 in case of economy class travel is being replaced by an ad valorem rate of twelve per cent. with abatement of sixty per cent. subject to the condition that no credit on inputs and capital goods is taken;

[The above changes will be applicable from 01.04.2012]

II. INTRODUCTION OF NEGATIVE LIST APPROACH:

A Negative List approach to taxation of services is being introduced vide new sections, namely, 65B, 66B, 66C, 66D, 66E and 66F proposed in Chapter V of the Finance Act, 1994 (please refer clause 143 of the Finance Bill, 2012). The services specified in the 'Negative List' (section 66D) shall remain outside the tax net. All other services, except those specifically exempted by the exercise of powers under section 93(1) of the Finance Act, 1994, would thus be chargeable to service tax. Negative list approach to taxation of services shall come into effect from a date to be notified, after the Finance Bill, 2012 receives the assent of the President. For operationalizing the Negative

List approach, a number of changes have been proposed in Chapter V of the Finance Act, 1994. **Detailed information regarding these changes is being made available as a Guidance Paper, which will be placed in the public domain.** The consequential changes in Service Tax Rules, 1994, Service Tax (Determination of Value) Rules, 2006 and Cenvat Credit Rules, 2004 also form part of this Guidance Paper. Provisions relating to positive list approach, namely, sections 65, 65A, 66, and 66A currently appearing in Chapter V of the Finance Act, 1994, will cease to operate from a date to be notified later, as and when the negative list approach begins to operate.

To support the negative list approach to taxation of services, draft Place of Provision of Services Rules, 2012 is being proposed.

The draft Place of Provision of Services Rules contains principles on the basis of which taxing jurisdiction of a service can be determined. The Place of Provision of Services Rules, 2012 will be notified after (section 66C) the Finance Bill, 2012 receives the assent of the President. When the Place of Provision of Services Rules comes into effect, existing 'Export of Services Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006' will be rescinded.

III. AMENDMENTS IN THE FINANCE ACT, 1994:

Chapter V of the Finance Act, 1994 is being amended:

- 1) A new section 67A is being inserted to prescribe that the value of taxable service (particularly in the case of import and export of taxable services) and the rate of tax shall be determined in terms of Point of Taxation Rules, 2011.
- 2) A new section 72A is being inserted to introduce provisions relating to special audit in the service tax law on the lines of section 14A and section 14AA of the Central Excise Act, 1944. Under this newly introduced section, special audit can be ordered under specified circumstances. Consequently, section 14AA is being omitted from section 83.
- 3) The one-year time limit for issuance of notice for specified category of offences prescribed under section 73(1) of the Finance Act, 1994, is being increased to eighteen months. A new sub-section (1A) is being inserted in section 73 of the Finance Act, 1994 to prescribe that follow-on notices issued on the same grounds need not repeat the grounds but only state the amount of service tax chargeable for the subsequent period. Statement of tax due for the subsequent period, served on the assessee with reference to the earlier demand notice, will be deemed as a notice under section 73(1) of the Finance Act, 1994.
- 4) Section 83 is being amended to make Settlement Commission provisions applicable to service tax in line with the similar provisions contained in sections 31, 32, 32A to 32P of the Central Excise Act, 1944.
- 5) Section 83 is being amended to make the revision mechanism prescribed in section 35EE of the Central Excise Act, 1944, applicable to service tax, to the extent possible.

6) Section 85 and section 86 are being amended on the lines of section 35 and 35E of the Central Excise Act so as to harmonize the limitation for filing assessee appeal before Commissioner (Appeals) and revenue appeal before the Tribunal.

7) Section 94(2) is being amended to obtain powers (a) to provide for the manner of compounding and to specify the amount of compounding of offences along the lines of Central Excise (Compounding of Offences) Rules, 2005; (b) to provide for rules for settlement of cases, along the lines of central excise.

[The above changes will come into effect from the date of enactment of the Finance Bill, 2012]

IV. NEW REVERSE CHARGE MECHANISM:

1) Section 68(2) of the Finance Act, 1994 is being amended to put the onus of payment of service tax on reverse charge basis partly on service provider and partly on service receiver. The scheme is proposed to be made applicable on three specific services i.e. hiring of means of transport; construction and man power supply. A notification will be issued after the Finance Bill, 2012 receives the assent of the President, in which the manner and extent of service tax payable by service provider and service receiver in the case of the three services will be specified.

2) Consequent to the above change, suitable amendment is also being made in the concept of 'person liable to pay' provided in Rule 2(1)(d) of Service Tax Rules, 1994.

V. RENTING OF IMMOVABLE PROPERTY SERVICE:

Constitutional validity of the levy of service tax on renting of immovable property has been the subject matter of litigation leading to pronouncement of court judgments favorable to revenue, including those of Honourable Delhi High Court and Honourable Supreme Court. Taking an overall view, the Government has decided to waive the penalty for those taxpayers who pay the service tax due on the renting of immovable property service (as on 06.03.2012), in full along with interest. For this purpose, a new section 80A is being inserted in the Finance Act, 1994. This scheme of penalty waiver will be open only for a period of six months from the date of enactment of the Finance Bill, 2012.

VI. RETROSPECTIVE EXEMPTIONS:

1) Vide Notification No.24/2009-ST dated 27.07.2009 service tax on repair of roads is already exempted. Vide section 97 of the Finance Act, 1994, the exemption granted to repair of roads is being extended for the earlier period from 16.06.2005 to 26.07.2009.

2) Management, maintenance or repair service undertaken in relation to non-commercial Government buildings is being exempted from service tax vide section 98, with effect from 16.06.2005 till the new charging section, namely section 66B, comes into force.

3) In the last budget, sub-rule 6A was inserted under rule 6 of the Cenvat Credit Rules, 2004 to protect the service providers located in the Domestic Tariff Area from the reversal of Cenvat credit, when they supply taxable services under exemption, to the authorized operations of SEZ. The application of sub-rule 6A is being given retrospective effect from 10.02.2006

[clause 144 of the Finance Bill, 2012].

4) Service provided by an association of dyeing units in relation to common effluent treatment plants was exempted from service tax vide Notification No.42/2011-ST dated 25.07.2011. The scope of the exemption is being expanded and the amended notification is being given retrospective effect from 16.06.2005[clause 145 of the Finance Bill, 2012].

[The above retrospective exemptions will come into effect on the date of enactment of the Finance Bill, 2012]

VII. AMENDMENTS IN RULES:

1) Cenvat Credit Rules, 2004 is being amended:

(a) Existing rule 5 to be replaced with a new rule to simplify the procedure for refund of unutilized credit on the account of exports;

(b) Credit is being allowed on motor vehicles (except those of heading nos. 8702, 8703, 8704, 8711 and their chassis).

The credit of tax paid on the supply of such vehicles on rent, insurance and repair shall also be allowed;

(c) Credit of insurance and service station service is being allowed to—

(i) insurance companies in respect of motor vehicles insured and re-insured by them; and

(ii) manufacturers in respect of motor vehicles manufactured by them.

(d) At present, credit on goods can be taken only after they are brought to the premises of the service provider. Rule 4(1) and 4(2) are being amended to allow a service provider to take credit of inputs or capital goods whenever the goods are delivered to him, subject to specified conditions.

(e) Rule 7 for input service distributors is being amended to provide that credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit and that the credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

(f) Rule 9(1)(e) is being amended to allow availment of credit on the tax payment challan in case of payment of service tax by the service receiver on reverse charge basis.

2) Service Tax Rules, 1994 is being amended as follows:

- (a) The time period provided in rule 4A for issuance of invoice is being increased to thirty days. For banks and financial institutions providing banking and other financial services, the period shall be forty five days;
- (b) Rule 6(4A) is being amended to allow unlimited amount of permissible adjustments.
- (c) At present, in the case of export and, individuals and firms rendering eight specified services, the point of taxation is the date of payment subject to certain conditions. This special dispensation is being shifted from the Point of Taxation Rules to the Service Tax Rules.
- (d) In case of exporters, the period extended by the Reserve Bank of India on specific requests is also being included in the period for which the tax liability is allowed to be deferred.
- (e) The option of deferred payment is being allowed for all service providers rather than for specific services. The facility will be available only to individuals and partnership firms (including limited liability partnership) upto a turnover of taxable services of Rupees Fifty lakhs subject to the condition that their turnover of taxable services in previous year was below Rupees Fifty lakhs. For computing the above limits, the turnover of the whole entity is required to be summed up and not any single registration.

3) Point of Taxation Rules, 2011 is being amended to—

- (a) Change the definition of continuous supply of service to capture the entire dimension of the concept, namely, the recurrent nature of services and the obligation for payment periodically or from time-to-time;
- (b) Omit rule 6 in respect of continuous supply of service and merge it with rule 3. Rules 4 and 5, which deal with situations covering change in effective rate of tax and taxation of new services, shall now be applicable to continuous supply of services also;
- (c) Define the date of payment;
- (d) To give an option to determine the point of taxation in respect of advances upto Rupees one thousand received in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment; and
- (e) Incorporate a new residual rule to ascertain point of taxation in cases where the same cannot be ascertained by the rules prescribed.

ANNEXURE-C

NOTES ON CLAUSES OF FINANCE BILL, 2012:

Service tax

Clause 143 of the Bill seeks to amend Chapter V of the Finance Act, 1994, relating to service tax, with a view to replace the existing system of taxation of services based on specified description of services with a new system of taxation of all services other than the services specified in the negative list, in the following manner—

Sub-clause (A) seeks to insert a proviso in section 65 so as to provide that the provisions of that section shall not apply with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (B) seeks to insert a new sub-section (3) in section 65A so as to provide that the provisions of that section shall not apply with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (C) seeks to insert a new section 65B with effect from such date as the Central Government may, by notification, appoint so as to define the following expressions—

actionable claim, advertisement, agriculture, agricultural extension, agricultural produce, Agricultural Produce Marketing Committee or Board, aircraft, airport, amusement facility, Appellate Tribunal, approved vocational education course, assessee, associated enterprise, authorised dealer of foreign exchange, betting or gambling, Board, business entity, Central Electricity Authority, Central Transmission Utility, courier agency, customs station, declared service, electricity transmission or distribution utility, entertainment event, goods, goods transport agency, India, information technology software, inland waterway, interest, local authority, metered cab, money, negative list, non-taxable territory, notification, person, port, prescribed, process amounting to manufacture or production of goods, renting, Reserve Bank of India, securities, service, Special Economic Zone, stage carriage, State Electricity Board, State Transmission Utility, support services, tax, taxable service, taxable territory, vessel, works contract.

This amendment shall have effect from such date as the Central Government may, by notification in the Official Gazette, appoint.

Sub-clause (D) seeks to insert a proviso in section 66 so as to provide that the provisions of that section shall not apply with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (E) seeks to insert a new sub-section (3) in section 66A so as to provide that the provisions of that section shall not apply with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (F) seeks to insert new sections 66B, 66C, 66D, 66E and 66F with effect from such date as the Central Government may, by notification, appoint. Proposed section 66B seeks to levy service tax at the rate of twelve per cent. on the value of services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another.

Proposed section 66C seeks to empower the Central Government to make rules to determine the place of provision of service having regard to the nature and description of various services.

Proposed section 66D seeks to specify the following list of services as the negative list:—

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere,—
 - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) transport of goods or passengers; or
 - (iv) support services, other than services covered under clauses (i) to (iii) above, to business entities;
- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to agriculture by way of:—
 - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
 - (ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) any process amounting to manufacture or production of goods;

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

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery;

(j) admission to entertainment events or access to amusement facilities;

(k) transmission or distribution of electricity by an electricity transmission or distribution utility;

(l) services by way of—

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by law;

(iii) education as a part of an approved vocational education course;

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of:—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange to deal in foreign exchange or foreign securities or amongst banks and such dealers;

(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 of less than fifteen tonne net; and

(vi) metered cabs, radio taxis or auto rickshaws;

(p) services by way of transportation of goods—

(i) by road except the services of—

(A) a goods transportation agency; or

(B) a courier agency;

(ii) by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or

(iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

Proposed section 66E seeks to declare the following activities as declared services which shall constitute services for the purpose of Chapter V of the Finance Act, 1994: —

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by the competent authority and to define “competent authority” and “construction” by way of explanations.

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;

(g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;

(h) service portion in the execution of a works contract;

(i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity;

Proposed section 66F seeks to provide for principles of interpretation of specified descriptions of services or bundled services.

Sub-clause (G) seeks to amend section 67, so as to omit clause

(b) of the Explanation thereto.

The amendments made by sub-clauses (A), (B), (C), (D), (E), (F) and (G) will come into force from a date to be notified by the Central Government.

Sub-clause (H) proposes to insert new section 67A, with a view to provide for date of determination of rate of tax, value of taxable service and rate of exchange. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (I) seeks to amend section 68 with a view to insert a proviso in sub-section (2), for the purpose of empowering the

Central Government to notify the services and the extent of service tax payable. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (J) seeks to insert new section 72A with a view to provide for a special audit to be carried out by a chartered accountant or cost accountant nominated by the Commissioner. The special audit shall be ordered where the service tax assessee has failed to declare or determine the value of taxable service or has availed and utilised credit of duty or tax beyond the normal limit or by means of, collusion or wilful mis-statement or he is having operations spread out in multiple locations. It is further proposed to provide that the chartered accountant or as the case may be, the cost accountant shall submit a report to the Commissioner on completion of the audit and such audit may be ordered even though such accounts had been audited under any other law for the time being in force. Before initiating proceedings on the basis of the report, a reasonable opportunity of being heard shall be given to the service tax assessee so audited.

This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (K) seeks to amend section 73, with a view to increase the period of issue of notice from one year to eighteen months. It is further proposed to insert sub-section (1A) with a view to provide that where a notice or notices have been served under sub-section (1), service of a statement of details of service tax not levied, or not paid or short levied or short paid or erroneously refunded, on the person chargeable with service tax, shall be deemed to be service of notice on such person if the grounds relied upon are the same. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (L) seeks to amend section 80 with a view to provide for penalty waiver on the service tax payable on service of renting of immovable property as on the 6th day of March, 2012, subject to the condition that the service tax and interest are paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (M) seeks to amend section 83 with a view to make certain provisions of the Central Excise Act applicable to the service tax. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (N) seeks to amend section 85 to provide for the period of limitation for filing appeal before the Commissioner (Appeals) as two months extendable by one month from the date of receipt of decision or order of the adjudicating authority. The period of limitation extended by this sub-clause shall be applicable for all decisions or orders passed by the adjudicating authority on or after the date on

which the Finance Bill, 2012 receives the assent of the President. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (O) seeks to amend section 86 with a view to provide for the period of limitation for filing appeal before the Tribunal as four months from the date of receipt of order by the Committee of Chief Commissioners or Committee of Commissioners. The period of limitation extended by this sub-clause shall be applicable for all decisions or orders passed after the date on which the Finance Bill, 2012 receives the assent of the President. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (P) seeks to amend section 88 to substitute the word 'duty' with the word 'tax'. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (Q) seeks to amend section 89, with a view to make evasion of payment of service tax knowingly committed, a punishable offence. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (R) seeks to amend section 93A, so as to provide for rebate of service tax on taxable services used for export of goods, after the stage of manufacture, processing or removal. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (S) seeks to insert a new section 93B in the Finance Act, 1994 with a view to provide that all the rules made under section 94 and applicable to taxable services shall also be applicable to services other than taxable services in so far as they are relevant to the determination of any tax liability, refund, credit of service tax or duties paid on inputs and input services or for carrying out the provisions of Chapter V of the Finance Act, 1994. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (T) seeks to amend sub-section (2) of section 94, to omit clause (ee), to amend clause (hhh) and to insert new clauses (i) and (j) relating to power to make rules. These amendments will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (U) seeks to amend section 95 of the said Act, so as to empower the Central Government to issue orders for removal of difficulty in case of certain provisions inserted by the proposed legislation in this Chapter, up to two years from the date of enactment of the Finance Bill, 2012. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (V) seeks to amend sub-section (2) of section 96C so as to substitute clause (e) thereof to provide for admissibility of credit of duty or tax in terms of rules made in this regard. This amendment will take effect from the date on which this Bill receives the assent of the President.

Sub-clause (W) seeks to insert section 97 and 98, with a view to extend service tax exemption retrospectively for repair of roads and non-commercial Government buildings for the period specified in the respective sections.

These amendments will take effect from the date on which this Bill receives the assent of the President.

Clause 144 of the Bill seeks to give retrospective effect to sub-rule (6A) of rule 6, inserted vide the notification of the Government of India number G.S.R. 134(E), dated the 1st March, 2011, in the CENVAT Credit Rules, 2004, from the 10th day of February, 2006 in the manner specified in the Eighth Schedule. This amendment will take effect from the date on which this Bill receives the assent of the President.

Clause 145 of the Bill, seeks to give retrospective effect to the notification of the Government of India number G.S.R. 566(E), dated the 25th July, 2011, from the 16th day of June, 2005, so as to allow the service tax exemption to a club or association service provided by a club or association, including cooperative societies, in relation to the project, under the said notification. The notification explains the expression "project" to mean common facility set up for treatment of effluents and solid wastes, with the Central Government's or State Government's financial assistance. This amendment will take effect from the date on which this Bill receives the assent of the President.