

## Finance Act 1994

### Section 78 - Penalty for Suppressing Value of Taxable Service

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1 [Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of--

- (a) fraud; or
- (b) collusion; or
- (c) willful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall not be less than, but which shall not exceed twice, the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded:]

2 [Provided that where such service tax as determined under sub-section (2) of section 73, and the interest payable thereon under section 75, is paid within thirty days from the date of communication of order of the 3 [Central Excise Officer] determining such service tax, the amount of penalty liable to be

paid by such person under this section shall be twenty-five per cent of the service tax so determined :

Provided further that the benefit of reduced penalty under the first proviso shall be available only if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the service tax as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the service tax determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of service tax so increased, the interest payable thereon and twenty-five per cent of the consequential increase of penalty have also been paid within thirty days of communication of the order by which such increase in service tax takes effect.

4[Provided also that if the penalty is payable under this section, the provisions of section 76 shall not apply.]

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

(1) the provisions of this section shall also apply to cases in which the order determining the service tax under sub-section (2) of section 73 relates to notices issued prior to the day on which the Finance Bill, 2003 receives the assent of the President;

(2) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

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1. Substituted by the Finance (No. 2) Act, 2004 w.e.f 10.09.2004 for the following:-

"If the [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise] in the course of any proceedings under this Chapter is satisfied that any person has, with intent to evade payment of service tax, suppressed or concealed the value of taxable service or has furnished inaccurate value of such taxable service, he may direct that such person shall pay by way of penalty, in addition to service tax and interest, if any, payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of service tax sought to be evaded by reason of suppression or concealment of the value of taxable service or the furnishing of inaccurate value of such taxable service:"

2. Substituted by the Finance Act, 2003, w.e.f. 14-5-2003. Prior to its substitution, it was amended by Finance Act, 2001, w.e.f. 16-7-2001 and Finance Act, 2002, w.e.f. 16-8-2002, read as under:

"Provided that if the value of taxable service (as determined by the Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise on assessment) in respect of which value has been suppressed or concealed or inaccurate value has been furnished exceeds a sum of two lakhs rupees, the Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise shall not issue any direction for payment by way of penalty without the previous approval of the Commissioner of Central Excise."

3. Substituted by the Finance Act, 2005 w.e.f 13.05.2005 for the words "Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise"

4. Inserted by the Finance Act, 2008.