

Finance Act 2005

Section 88 - Amendment of Act 32 of 1994

In the Finance Act, 1994,--

(a) in section 65, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint,--

(i) in clause (9), for the words "service or repair", the words "service, repair, reconditioning or restoration" shall be substituted;

(ii) in clause (15), for the words "collecting the broadcasting charges on behalf of the said agency", the words "collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator including multi system operator or any other person on behalf of the said agency" shall be substituted;

(iii) in clause (16), for the words "collecting the broadcasting charges on behalf of the said agency", the words "collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency" shall be substituted;

(iv) for clause (17), the following clause shall be substituted, namely:--

'(17) "beauty treatment" includes hair cutting, hair dyeing, hair dressing, face and beauty treatment, cosmetic treatment, manicure, pedicure or counselling services on beauty, face care or make-up or such other similar services;'

(v) in clause (19),--

(i) in sub-clause (iv), the following Explanation shall be inserted at the end, namely:--

'Explanation.--For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;'

(ii) for sub-clause (v), the following sub-clause shall be substituted, namely:--

"(v) production or processing of goods for, or on behalf of, the client;"

(iii) for the Explanation, the following Explanation shall be substituted, namely:--

'Explanation.--For the removal of doubts, it is hereby, declared that for the purposes of this clause,--

(a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person--

(i) deals with goods or services or documents of title to such goods or services; or

(ii) collects payment of sale price of such goods or services; or

(iii) guarantees for collection or payment for such goods or services; or

(iv) undertakes any activities relating to such sale or purchase of such goods or services;

(b) "information technology service" means any "service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems";

(vi) after clause (24a), the following clause shall be inserted, namely:--

'(24b) "cleaning activity" means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of--

(i) commercial or industrial buildings and premises thereof; or

(ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof,

but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying;';

(vii) after clause (25), the following clauses shall be inserted, namely:--

'(25a) "club or association" means any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include--

(i) any body established or constituted by or under any law for the time being in force; or

(ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or

(iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or

(iv) any person or body of persons associated with press or media;

(25b) "commercial or industrial construction service" means--

(a) construction of a new building or a civil structure or a part thereof; or

(b) construction of pipeline or conduit; or

(c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is--

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;';

(viii) for clause (30a), the following clause shall be substituted, namely:--

'(30a) "construction of complex" means--

(a) construction of a new residential complex or a part thereof; or

(b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or

(c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;';

(ix) after clause (36), the following clause shall be inserted, namely:--

'(36a) "dredging" includes removal of material including, silt, sediments, rocks, sand, refuse, debris, plant or animal matter in any excavating, cleaning, deepening, widening or lengthening, either permanently or temporarily, of any river, port, harbour, backwater or estuary;';

(x) for clause (39a), the following clause shall be substituted, namely:--

'(39a) "erection, commissioning or installation" means any service provided by a commissioning and installation agency, in relation to,--

(i) erection, commissioning or installation of plant, machinery or equipment; or

(ii) installation of--

(a) electrical and electronic devices, including wirings or fittings therefor; or

(b) plumbing, drain laying or other installations for transport of fluids; or

(c) heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work; or

(d) thermal insulation, sound insulation, fire proofing or water proofing; or

(e) lift and escalator, fire escape staircases or travelators; or

(f) such other similar services;';

(xi) for clause (47), the following clause shall be substituted, namely:--

'(47) "franchise" means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved;';

(xii) in clause (55b), in sub-clause (a), for the words ", whether permanently or otherwise", the word "temporarily" shall be substituted;

(xiii) after clause (63), the following clause shall be inserted, namely:--

'(63a) "mailing list compilation and mailing" means any service in relation to--

(i) compiling and providing list of name, address and any other information from any source; or

(ii) sending document, information, goods or any other material in a packet, by whatever name called, by addressing, stuffing, sealing, metering or mailing,

for, or on behalf of, the client;';

(xiv) for clause (64), the following clause shall be substituted, namely:--

'(64) "maintenance or repair" means any service provided by--

- (i) any person under a contract or an agreement; or
- (ii) a manufacturer or any person authorised by him,

in relation to,--

(a) maintenance or repair including reconditioning or restoration, or servicing of any goods or equipment, excluding motor vehicle; or

(b) maintenance or management of immovable property;';

(xv) for clause (68), the following clause shall be substituted, namely:--

'(65) "manpower recruitment or supply agency" means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client;';

(xvi) in clause (76a), after the words "other than his own", the words "but including a place provided by way of tenancy or otherwise by the person receiving such services" shall be inserted;

(xvii) after clause (76a), the following clause shall be inserted, namely:--

'(76b) "packaging activity" means packaging of goods including pouch filling, bottling, labelling or imprinting of the package, but does not include any packaging activity that amounts to 'manufacture' within the meaning of clause (f) of section 2 of the Central Excise Act, 1944(1 of 1944);';

(xviii) after clause (91), the following clauses shall be inserted, namely:--

'(91a) "residential complex" means any complex comprising of--

(i) a building or buildings, having more than twelve residential units;

(ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,

located within a premises and the layout of such premises is approved by any authority under law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation.--For the removal of doubts, it is hereby declared that for the purposes of this clause,--

(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;';

(xix) after clause (97), the following clause shall be inserted, namely:--

'(97a) "site formation and clearance, excavation and earthmoving and demolition" includes,--

- (i) drilling, boring and core extraction services for construction, geophysical, geological or similar purposes; or
- (ii) soil stabilization; or
- (iii) horizontal drilling for the passage of cables or drain pipes; or
- (iv) land reclamation work; or
- (v) contaminated top soil stripping work; or
- (vi) demolition and wrecking of building, structure or road,

but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies;";

(xx) for clause (98), the following clause shall be substituted, namely:--

'(98) "sound recording" means recording of sound on any media or device including magnetic storage device, and includes services relating to recording of sound in any manner such as sound cataloguing, storing of sound and sound mixing or re-mixing or any audio post-production activity;';

(xxi) after clause (104a), the following clause shall be inserted, namely:--

'(104b) "survey and map-making" means geological, geophysical or any other prospecting, surface, sub-surface or aerial surveying or map-making of any kind, but does not include survey and exploration of mineral;';

(xxii) in clause (105),--

(a) for the words "service provided", the words "service provided or to be provided" shall be substituted;

(b) for sub-clause (k), the following sub-clause shall be substituted, namely:--

"(k) to a client, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;";

(c) in sub-clause (m), for the words "provided to the client in relation to such use and also the services, if any, rendered as a caterer", the words "provided or to be provided to the client in relation to such use and also the services, if any, provided or to be provided as a caterer" shall be substituted;

(d) in sub-clause (zk), for the words "collecting the broadcasting charges on behalf of the said agency", the words "collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency" shall be substituted;

(e) in sub-clause (zo), for the words "or repair of motorcars", the words "repair, reconditioning or restoration of motor cars; light motor vehicles" shall be substituted;

(f) sub-clause (zzj) shall be omitted;

(g) in sub-clause (zzk), for the words, brackets and letters "sub-clauses (zm) and (zp)", the words, brackets and letters "sub-clause (zm)" shall be substituted;

(h) in sub-clause (zzq), for the words "construction service", the words "commercial or industrial construction service" shall be substituted;

(i) in sub-clause (zzw), for the word "rendered", the words "provided or to be provided" shall be substituted;

(j) after sub-clause (zzy), the following sub-clauses shall be inserted, namely:--

"(zzz) to any person by any other person, in relation to transport of goods other than water, through pipeline or other conduit;

(zzza) to any person, by any other person, in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities;

(zzzb) to any person, by any other person, in relation to dredging;

(zzzc) to any person, by any other person, other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making;

(zzzd) to any person, by any other person, in relation to cleaning activity;

(zzze) to its members, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount;

(zzzf) to any person, by any other person, in relation to packaging activity;

(zzzg) to any person, by any other person, in relation to mailing list compilation and mailing;

(zzzh) to any person, by any other person, in relation to construction of complex;"; (k) at the end, the following Explanation shall be inserted, namely:--

"Explanation.-For the removal of doubts, it is hereby declared that where any service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India and such service is received or to be received by a person who has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India such service shall be deemed to be taxable service for the purposes of this clause;";

(xxiii) for clause (120), the following clause shall be substituted, namely:--

'(120) "video-tape production" means the process of any recording of any programme, event or function on a magnetic tape or on any other media or device and includes services relating thereto such as editing, cutting, colouring, dubbing, title printing, imparting special effects, processing, adding, modifying or deleting sound, transferring from one media or device to another, or undertaking any video post-production activity, in any manner;';

(b) in section 66, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint,--

(i) for the brackets and letters "(zzj), (zzk)", the brackets and letters "(zzk)" shall be substituted;

(ii) for the word, brackets and letters "and (zzy)", the brackets, letters and word ", (zzy), (zzz), (zzza), (zzzb), (zzzc), (zzzd), (zzze), (zzzf), (zzzg) and (zzzh)" shall be substituted;

(c) in section 67,--

(i) for the words "rendered by him", the words "provided or to be provided by him" shall be substituted;

(ii) after Explanation 2, the following Explanation shall be inserted, namely:--

"Explanation 3.--For the removal of doubts, it is hereby declared that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.";

(d) section 69 shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:--

"(2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.";

(e) section 70 shall be numbered as sub-section (1) thereof, and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:--

"(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of the Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.";

(f) in section 73, for the words "Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise", wherever they occur, the words "Central Excise Officer" shall be substituted;

(g) in section 74, for the words "Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise", wherever they occur, the words "Central Excise Officer" shall be substituted;

(h) in section 78, in the first proviso, for the words "Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise", the words "Central Excise Officer" shall be substituted;

(i) in section 83, for the figures and letter "15, 35F,", the figures and letters "15, 33A, 35F" shall be substituted;

(j) after section 83, the following section shall be inserted, namely:--

'83A. Power of adjudication:--Where under this Chapter or the rules made thereunder any person is liable to a penalty, such penalty may be adjudged by the Central Excise Officer conferred with such power as the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963(54 of 1963), may, by notification in the Official Gazette, specify";

(k) in section 84,--

(a) in sub-section (1), for the words "which has been taken by the Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise", the words "in which an adjudicating authority subordinate to him has passed any decision or order" shall be substituted;

(b) in sub-section (3), for the words "the Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise", the words "such adjudicating authority" shall be substituted;

(l) in section 85,--

(a) for sub-section (1), the following sub-section shall be substituted, namely:--

"(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).";

(b) in sub-section (3), for the words "the Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise", the words "such adjudicating authority" shall be substituted;

(m) in section 86,--

(a) in sub-section (1), for the word and figures "section 84", the words, letter and figures "section 73 or section 83A or section 84" shall be substituted;

(b) in sub-section (2), for the word and figures "section 84", the words, letter and figures "section 73 or section 83A or section 84" shall be substituted;

(c) in sub-section (2A), for the words "the Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise to appeal", the words "any Central Excise Officer to appeal on his behalf" shall be substituted;

(d) in sub-section (4), for the words "Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise", the words "any Central Excise Officer subordinate to him" shall be substituted;

(n) in section 94, in sub-section (2),--

(i) in clause (b), for the words and figures "under section 69", the words, brackets and figures "under sub-sections (1) and (2) of section 69" shall be substituted;

(ii) in clause (c), for the words and figures "under section 70", the words, brackets and figures "under sub-sections (1) and (2) of section 70" shall be substituted;

(o) in section 96A,--

(i) for clause (b), the following clause shall be substituted, namely:--

'(b) "applicant" means any person who,--

(i) (a) is a non-resident setting up a joint venture in India in collaboration with a nonresident or a resident; or

(b) is a resident setting up a joint venture in India in collaboration with a non-resident; or

(c) is a wholly owned subsidiary Indian company, of which the holding company is a foreign company,

who or which, as the case may be, proposes to undertake any business activity in India;

(ii) is a joint venture in India; or

(iii) is a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf,

and which or who, as the case may be, makes application for advance ruling under subsection (1) of section 96C;';

(ii) in clause (d), for the words "Authority for Advance Rulings", the words and brackets "Authority for Advance Rulings (Central Excise, Customs and Service Tax)" shall be substituted.