

Finance Act, 2006

Chapter IV - Indirect Taxes

Section 58 - Amendment of section 23

In section 23 of the Customs Act, 1962(52 of 1962) (hereinafter referred to as the Customs Act), in sub-section (2), the following proviso shall be inserted, namely:--

"Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

Section 59 - Amendment of section 68

In section 68 of the Customs Act, after the proviso, the following proviso shall be inserted, namely:--

"Provided further that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

Section 60 - Amendment of notifications issued under section 25 of Customs Act

(1) The notifications of the Government of India in the Ministry of Finance (Department of Revenue) numbers G.S.R. 423(E), dated the 20th April, 1992 and G.S.R. 619(E), dated the 17th September, 2004, issued under sub-section (1) of section 25 of the Customs Act, shall stand amended and shall be deemed to have been amended in the manner as specified against each of them in column (3) of the Second Schedule, on and from the corresponding date mentioned in column (4) of that Schedule retrospectively, and accordingly, 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 under the said notifications, shall be deemed to be, and always to have been, for all purposes, as validly and effectively taken or done as if the notifications as amended by this sub-section had been in force at all material times.

(2) Notwithstanding the expiration of the notifications referred to in sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the notifications referred to in the said sub-section with retrospective effect as if the Central Government had the power to amend the said notifications under sub-section (1) of section 25 of the Customs Act, retrospectively, at all material times.

Explanation.--For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Section 61 TO 63 - Customs tariff

Section 61 - Amendment of section 9

In section 9 of the Customs Tariff Act, 1975(51 of 1975) (hereinafter referred to as the Customs Tariff Act),--

(a) in sub-section (1), in the Explanation, in clause (a), for the words "within the territory of the exporting or producing country", the words "in the exporting or producing country or territory" shall be substituted;

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

"(7A) Unless otherwise provided, the provisions of the Customs Act, 1962(52 of 1962) and the rules and regulations made thereunder, relating to the date for determination of rate of duty, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply in relation to duties leviable under that Act."

Section 62 - Amendment of section 9A

In section 9A of the Customs Tariff Act, in sub-section (1), in the Explanation, in clause (c), in sub-clause (i), for the words "meant for consumption", the words "destined for consumption" shall be substituted.

Section 63 - Amendment of First Schedule

In the Customs Tariff Act, the First Schedule shall,--

(a) be amended in the manner specified in the Third Schedule; and

(b) with effect from the 1st day of January, 2007, be also amended in the manner specified in the Fourth Schedule.

Section 64 - Amendment of section 12C

In section 12C of the Central Excise Act, 1944(1 of 1944) (hereinafter referred to as the Central Excise Act), in sub-section (2), after clause (c), the following clause shall be inserted, namely:--

"(d) the surplus amount referred to in sub-section (6) of section 73A of the Finance Act, 1994(32 of 1994).".

Section 65 - Amendment of section 23C

In section 23C of the Central Excise Act, in sub-section (2), after clause (e), the following clause shall be inserted, namely:--

"(f) determination of the liability to pay duties of excise on any goods under this Act.".

Section 66 - Amendment of Third Schedule

In the Central Excise Act, the Third Schedule shall,--

(a) with effect from the 1st day of January, 2007, be amended in the manner specified in Part I of the Fifth Schedule; and

(b) with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, be also amended in the manner specified in Part II of the said Fifth Schedule.

Section 67 - Amendment of First Schedule to Act 5 of 1986

Excise tariff

In the Central Excise Tariff Act, 1985, the First Schedule shall,--

(a) be amended in the manner specified in the Sixth Schedule; and

(b) with effect from the 1st day of January, 2007, be also amended in the manner specified in the Seventh Schedule.

Section 68 - Amendment of Act 32 of 1994

Service tax

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,--

(1) in clause (3), for the words "commercial concern", the word "person" shall be substituted;

(2) for clause (3b), the following clause shall be substituted, namely:--

'(3b) "aircraft operator" means any person who provides the service of transport of goods or passengers by aircraft;'

(3) after clause (7), the following clause shall be inserted, namely:--

'(7a) "auction of property" includes calling the auction or providing a facility, advertising or illustrating services, pre-auction price estimates, short-term storage services, repair or restoration services in relation to auction of property;'

(4) after clause (9), the following clauses shall be inserted, namely:--

'(9a) "automated teller machine" means an interactive automatic machine designed to dispense cash, accept deposit of cash, transfer money between bank accounts and facilitate other financial transactions;

(9b) "automated teller machine operations, maintenance or management service" means any service provided in relation to automated teller machines and includes site selection, contracting of location, acquisition, financing, installation, certification, connection, maintenance, transaction processing, cash forecasting, replenishment, reconciliation and value-added services;

(9c) "banker to an issue" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934(2 of 1934), carrying on the activities relating to an issue including acceptance of application, application money, allotment money and call money, refund of application money, payment of dividend and interest warrants;'

(5) in clause (12), in sub-clause (a),--

(a) for the words "commercial concern", the words "any other person" shall be substituted;

(b) item (ii) shall be omitted;

(c) for item (viii), the following items shall be substituted, namely:--

"(viii) banker to an issue services; and

(ix) other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts;";

(6) in clause (19), in the Explanation, in clause (b), for the words "developing or maintaining of computer software, or

computerised data processing", the words "or developing of computer software" shall be substituted;

(7) in clause (31), for the words "an engineering firm", the words "any body corporate or any other firm" shall be substituted;

(8) in clause (33), for the words "a commercial concern", the words "any person" shall be substituted;

(9) after clause (33), the following clause shall be inserted, namely:--

'(33a) "credit card, debit card, charge card or other payment card service" includes any service provided,--

(i) by a banking company, financial institution including non-banking financial company or any other person (hereinafter referred to as the issuing bank), issuing such card to a card holder;

(ii) by any person to an issuing bank in relation to such card business, including receipt and processing of application, transfer of embossing data to issuing bank's personalisation agency, automated teller machine personal identification number generation, renewal or replacement of card, change of address, enhancement of credit limit, payment updation and statement generation;

(iii) by any person, including an issuing bank and an acquiring bank, to any other person in relation to settlement of any amount transacted through such card.

Explanation.--For the purposes of this sub-clause, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card;

(iv) in relation to joint promotional cards or affinity cards or co-branded cards;

(v) in relation to promotion and marketing of goods and services through such card;

(vi) by a person, to an issuing bank or the holder of such card, for making use of automated teller machines of such person; and

(vii) by the owner of trade marks or brand name to the issuing bank under an agreement, for use of the trade mark or brand name and other services in relation to such card, whether or not such owner is a club or association and the issuing bank is a member of such club or association.

Explanation.--For the purposes of this sub-clause, an issuing bank and the owner of trade marks or brand name shall be treated as separate persons;";

(10) in clause (34), for the words "commercial concern", the word "person" shall be substituted;

(11) after clause (35), the following clause shall be inserted, namely:--

'(35a) "customs airport" means an airport appointed as such under clause (a) of subsection (1) of section 7 of the Customs Act, 1962(52 of 1962);";

(12) in clause (38), for the words "commercial concern", the word "person" shall be substituted;

(13) in clause (39a), in sub-clause (i), for the words "machinery or equipment", the words "machinery, equipment or structures, whether pre-fabricated or otherwise" shall be substituted;

(14) in clause (50b), for the words "commercial concern which", the words "person who" shall be substituted;

(15) after clause (56), the following clauses shall be inserted, namely:--

'(56a) "international journey", in relation to a passenger, means his journey from any customs airport on board any aircraft to a place outside India;

(56b) "internet" means a global information system which is logically linked together by a globally unique address, based on Internet Protocol or its subsequent enhancements or upgradations and is able to support communications using the Transmission Control Protocol or Internet Protocol suite or its subsequent enhancements or upgradations and all other Internet Protocol compatible protocols;";

(16) after clause (57), the following clause shall be inserted, namely:--

'(57a) "internet telephony" means telecommunication service through internet and includes fax, audio conferencing and video conferencing;";

(17) in clause (58), for the words "in India", the words "and includes a re-insurer" shall be substituted;

(18) after clause (59), the following clause shall be inserted, namely:--

'(59a) "issue" means an offer of sale or purchase of securities to, or from, the public or the holder of securities;";

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

'(64) "management, 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) management of properties, whether immovable or not;

(b) maintenance or repair of properties, whether immovable or not; or

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

(20) in clause (65), for the words "relating to conceptualising, devising, development, modification, rectification or upgradation of any working system of any organisation", the words "in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management" shall be substituted;

(21) in clauses (68) and (69), for the words "commercial concern" wherever they occur, the word "person" shall be substituted;

(22) after clause (77b), the following clause shall be inserted, namely:--

'(77c) "passenger" means any person boarding, at any customs airport, an aircraft for performing an international journey, but does not include--

(i) a person who has arrived at such customs airport from a place outside India and is in transit through India, provided that he does not pass through immigration and does not leave customs area and continues his journey to a place outside India; and

(ii) a person employed or engaged by the aircraft operator in any capacity on board the aircraft;";

(23) in clause (79), for the words "a commercial concern", the words "any person" shall be substituted;

(24) in clause (86b), for the words "a commercial concern which", the words "any person who" shall be substituted;

(25) after clause (86b), the following clause shall be inserted, namely:--

'(86c) "public relations" includes strategic counselling based on industry, media and perception research, corporate image management, media relations, media training, press release, press conference, financial public relations, brand support, brand launch, retail support and promotions, events and communications and crisis communications;";

(26) after clause (89b), the following clause shall be inserted, namely:--

'(89c) "registrar to an issue" means any person carrying on the activities in relation to an issue including collecting application forms from investors, keeping a record of applications and money received from investors or paid to the seller of securities, assisting in determining the basis of allotment of securities, finalising the list of persons entitled to allotment of securities and processing and despatching allotment letters, refund orders or certificates and other related documents;";

(27) in clause (94), for the words "commercial concern", the word "person" shall be substituted;

(28) after clause (95), the following clause shall be inserted, namely:--

'(95a) "share transfer agent" means any person who maintains the record of holders of securities and deals with all matters connected with the transfer or redemption of securities or activities incidental thereto;";

(29) after clause (96), the following clause shall be inserted, namely:--

'(96a) "ship management service" includes,--

(i) the supervision of the maintenance, survey and repair of ship;

(ii) engagement or providing of crews;

(iii) receiving the hire or freight charges on behalf of the owner;

(iv) arrangements for loading and unloading;

(v) providing for victualling or storing of ship;

(vi) negotiating contracts for bunker fuel and lubricating oil;

(vii) payment, on behalf of the owner, of expenses incurred in providing services or in relation to the management of ship;

(viii) the entry of ship in a protection or indemnity association;

(ix) dealing with insurance, salvage and other claims; and

(x) arranging of insurance in relation to ship;";

(30) in clause (99), for the words "commercial concern", the word "person" shall be substituted;

(31) after clause (99), the following clause shall be inserted, namely:--

'(99a) "sponsorship" includes naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors;";

(32) after clause (104b), the following shall be inserted, namely:--

'(104c) "support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation

of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation.--For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security; '

(33) in clause (105),--

- (a) for the words "policy holder" wherever they occur, the words "policy holder or any person" shall be substituted;
- (b) for the word "insurer" wherever it occurs, the words "insurer, including re-insurer" shall be substituted;
- (c) in sub-clause (zc), for the words "commercial concern", the word "person" shall be substituted;
- (d) in sub-clause (zh), for the words "a commercial concern", the words "any person" shall be substituted;
- (e) in sub-clause (zm), for the words "commercial concern", the words "any other person" shall be substituted;
- (f) in sub-clause (zzb), for the words "a commercial concern", the words "any person" shall be substituted;
- (g) in sub-clause (zzg), for the words "maintenance or repair", the words "management, maintenance or repair" shall be substituted;
- (h) in sub-clause (zzg), for the words "a commercial concern", the words "any other person" shall be substituted;
- (i) after sub-clause (zzzh), the following shall be inserted, namely:--

'(zzzi) to any person, by a registrar to an issue, in relation to sale or purchase of securities;

(zzzj) to any person, by a share transfer agent, in relation to securities;

(zzzk) to any person, by any other person, in relation to automated teller machine operations, maintenance or management service, in any manner;

(zzzl) to a banking company or a financial institution including a non-banking financial company or any other body corporate or a firm, by any person, in relation to recovery of any sums due to such banking company or financial institution, including a non-banking financial company, or any other body corporate or a firm, in any manner;

(zzzm) to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organisation.

Explanation 1.--For the purposes of this sub-clause, "sale of space or time for advertisement" includes,--

(i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet;

(ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organisation; and

(iii) aerial advertising.

Explanation 2.--For the purposes of this sub-clause, "print media" means "book" and "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867(25 of 1867);

(zzzn) to any body corporate or firm, by any person receiving sponsorship, in relation to such sponsorship, in any manner, but does not include services in relation to sponsorship of sports events;

(zzzo) to any passenger, by an aircraft operator, in relation to scheduled or non-scheduled air transport of such passenger embarking in India for international journey, in any class other than economy class.

Explanation 1.--For the purposes of this sub-clause, economy class in an aircraft meant for scheduled air transport of passengers means,--

(i) where there is more than one class of travel, the class attracting the lowest standard fare; or

(ii) where there is only one class of travel, that class.

Explanation 2.--For the purposes of this sub-clause, in an aircraft meant for non-scheduled air transport of passengers, no class of travel shall be treated as economy class;

(zzzp) to any person, by any other person other than Government railway as defined in clause (20) of section 2 of the Railways Act, 1989(24 of 1989), in relation to transport of goods in containers by rail, in any manner;

(zzzq) to any person, by any other person, in relation to support services of business or commerce, in any manner;

(zzzr) to any person, by any other person, in relation to auction of property, movable or immovable, tangible or intangible, in any manner, but does not include auction of property under the directions or orders of a court of law or auction by the Government;

(zzzs) to any person, by any other person, in relation to managing the public relations of such person, in any manner;

(zzzt) to any person, under a contract or an agreement, by any other person, in relation to ship management service;

(zzzu) to any person, by any other person, in relation to internet telephony;

(zzzv) to any person, by any other person, in relation to transport of such person embarking from any port or other port in India, by a cruise ship.

Explanation.--For the purposes of this sub-clause, "cruise ship" means a ship or vessel used for providing recreational or pleasure trips, but does not include a ship or vessel used for private purposes or a ship or vessel of, or less than, fifteen net tonnage;

(zzzw) to any person, by any other person, in relation to credit card, debit card, charge card or other payment card service, in any manner;';

(j) the Explanation occurring at the end shall be omitted;

(34) in clause (106), the following Explanation shall be inserted, namely:--

'Explanation.--For the removal of doubts, it is hereby declared that for the purposes of this clause, "technical testing and analysis" includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals;';

(35) after clause (121), the following Explanation shall be inserted, namely:--

"Explanation.--For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration.";

(B) in section 66,--

(1) for the words "ten per cent.", the words "twelve per cent." shall be substituted;

(2) with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for the word, brackets and letters "and (zzzh)", the brackets, letters and word ", (zzzh), (zzzi), (zzzj), (zzzk), (zzzl), (zzzm), (zzzn), (zzzo), (zzzp), (zzzq), (zzzr), (zzzs), (zzzt), (zzzu), (zzzv) and (zzzw)" shall be substituted;

(C) after section 66, the following section shall be inserted, namely:--

'66A. Charge of service tax on services received from outside India.--(1) Where any service specified in clause (105) of section 65 is,--

(a) 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

(b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:

Provided that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:

Provided further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1.--A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Explanation 2.--Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.';

(D) for section 67, the following section shall be substituted, namely:--

'67. Valuation of taxable services for charging service tax.--(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,--

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) 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.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be

prescribed.

Explanation.--For the purposes of this section,--

- (a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;
- (b) "money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;
- (c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.;

(E) in section 73,--

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

"(1A) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Chapter or the rules made thereunder, with intent to evade payment of service tax, by such person or his agent, to whom a notice is served under the proviso to sub-section (1) by the Central Excise Officer, such person or agent may pay service tax in full or in part as may be accepted by him, and the interest payable thereon under section 75 and penalty equal to twenty-five per cent. of the service tax specified in the notice or the service tax so accepted by such person within thirty days of the receipt of the notice.";

- (b) in sub-section (2), the following provisos shall be inserted, namely:--

"Provided that where such person has paid the service tax in full together with interest and penalty under sub-section (1A), the proceedings in respect of such person and other persons to whom notices are served under sub-section (1) shall be deemed to be concluded:

Provided further that where such person has paid service tax in part along with interest and penalty under sub-section (1A), the Central Excise Officer shall determine the amount of service tax or interest not being in excess of the amount partly due from such person.";

- (F) after section 73, the following sections shall be inserted, namely:--

"73A. Service tax collected from any person to be deposited with Central Government.--(1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made thereunder from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.

(3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

(4) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (3), determine the amount due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount so determined.

(5) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (2) or sub-section (4), shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).

(6) Where any surplus amount is left after the adjustment under sub-section (5), such amount shall either be credited to the Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944(1 of 1944) or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B of the said Act and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount.

73B. Interest on amount collected in excess.--Where an amount has been collected in excess of the tax assessed or determined and paid for any taxable service under this Chapter or the rules made thereunder from the recipient of such service, the person who is liable to pay such amount as determined under sub-section (4) of section 73A, shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent. and not exceeding twenty-four per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Chapter, but for the provisions contained in sub-section (4) of section 73A, till the date of payment of such amount:

Provided that in such cases where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B of the Central Excise Act, 1944(1 of 1944), and such amount payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases, the interest shall be payable on the whole amount, including the amount already paid.

Explanation 1.--Where the amount determined under sub-section (4) of section 73A is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such reduced amount.

Explanation 2.--Where the amount determined under sub-section (4) of section 73A is increased by the

Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such increased amount.

73C. Provisional attachment to protect revenue in certain cases.--(1) Where, during the pendency of any proceeding under section 73 or section 73A, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 73 or sub-section (3) of section 73A, as the case may be, in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years.

73D. Publication of Information in respect of persons in certain cases.--(1) If the Central Government is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings under this Chapter in respect of such person, it may cause to be published such names and particulars in such manner as may be prescribed.

(2) No publication under this section shall be made in relation to any penalty imposed under this Chapter until the time for presenting an appeal to the Commissioner (Appeals) under section 85 or the Appellate Tribunal under section 86, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.--In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, shall also be published if, in the opinion of the Central Government, circumstances of the case justify it.";

(G) for section 76, the following section shall be substituted, namely:--

"76. Penalty for failure to pay service tax.--Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two per cent. of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax:

Provided that the total amount of the penalty payable in terms of this section shall not exceed the service tax payable.

Illustration

X, an assessee, fails to pay service tax of Rs. 10 lakhs payable by 5th March. X pays the amount on 15th March. The default has continued for 10 days. The penalty payable by X is computed as follows:--

2% of the amount of default for 10 days = $2 \times 10,00,000 \times 10/31 = \text{Rs. } 6,451.61$

Penalty calculated @ Rs. 200 per day for 10 days =Rs. 2,000

Penalty liable to be paid is Rs. 6,452.00.";

(H) in section 83, the figures and letter "11" and "11D" shall be omitted;

(I) after section 86, the following section shall be inserted, namely:--

"87. Recovery of any amount due to Central Government.--Where any amount payable by a person to the credit of the Central Government under any of the provisions of this Chapter or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below:--

(a) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs;

(b) (i) the Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom a notice is issued under this section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow;

(c) the Central Excise Officer may, on an authorisation by the Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty

days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(d) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.";

(IA) after section 93, the following section shall be inserted, namely:-

"93A. Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or processing of such goods or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed:

Provided that where any rebate has been allowed on any goods or services under this section and the sale proceeds in respect of such goods or consideration in respect of such services are not received by or on behalf of the exporter in India within the time allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999, such rebate shall be deemed never to have been allowed and the Central Government may recover or adjust the amount of such rebate in such manner as may be prescribed.";

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

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

"(aa) the determination of amount and value of taxable service under section 67;"

(2) after clause (c), the following clauses shall be inserted, namely:--

"(cc) the manner of provisional attachment of property under sub-section (1) of section 73C;

(ccc) publication of name of any person and particulars relating to any proceeding under sub-section (1) of section 73D;"

(3) after clause (eee), the following clause shall be inserted, namely:--

"(eeee) the manner of recovery of any amount due to the Central Government under section 87;"

(4) after clause (h), the following clause shall be inserted, namely:-

"(hh) rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India under section 93A;"

(K) in section 95, after sub-section (1B), the following sub-section shall be inserted, namely:--

"(1C) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2006, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2006 receives the assent of the President.";

(L) in section 96C, in sub-section (2), after clause (e), the following clause shall be inserted, namely:--

"(f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V."
