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Finance Act 2008

Section 90 - 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,--

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

(7b) associated enterprise has the meaning assigned to it in section 92A of the Income-tax Act, 1961(43 of 1961);;

(2) in clause (12),--

(a) in sub-clause (a), for item (iv), the following item shall be substituted, namely:--

(iv) securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;;

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

(b) foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer, other than those covered under sub-clause (a);;

(c) after sub-clause (b) as so amended, the following Explanation shall be inserted at the end, namely:--

Explanation.-- For the purposes of this clause, it is hereby declared that purchase or sale of foreign currency, including money changing includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately;;

(3) in clause (19),--

(a) in sub-clause (ii), 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, service in relation to promotion or marketing of service provided by the client includes any service provided in relation to promotion or marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not

conducted online, including lottery, lotto, bingo;;

(b) the words any information technology service and shall be omitted;

(c) in the Explanation, clause (b) shall be omitted;

(4) for clause (23), the following clause shall be substituted, namely:--

(23) cargo handling service means loading, unloading, packing or unpacking of cargo and includes,--

(a) cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and

(b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking, but does not include, handling of export cargo or passenger baggage or mere transportation of goods;;

(5) in clause (31), for the words to a client, the words to any person shall be substituted;

(6) after clause (53), the following clause shall be inserted, namely:--

(53a) 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;;

(7) for clause (57a), the following clause shall be substituted, namely:--

(57a) internet telecommunication service includes,--

(i) internet backbone services, including carrier services of internet traffic by one Internet Service Provider to another Internet Service Provider,

(ii) internet access services, including provision of a direct connection to the internet and space for the customers web page,

(iii) provision of telecommunication services, including fax, telephony, audio conferencing and video conferencing, over the internet;;

(8) in clause (64), 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) goods includes computer software;

(b) properties includes information technology software;;

(9) in clause (68), for the words to a client, the words to any other person shall be substituted;

(10) in clause (75), for the words to a customer, the words to any person shall be substituted;

(11) after clause (86c), the following clause shall be inserted, namely:--

(86d) processing and clearing house means any person including the clearing corporation authorised or assigned by a recognised stock exchange, recognised association or a registered association to perform the duties and functions of a clearing house in relation to,--

(i) the periodical settlement of contracts for, or relating to, the sale or purchase of securities, goods or forward contracts and differences thereunder;

(ii) the delivery of, and payment for, securities, goods or forward contracts;

(iii) any other matter incidental to, or connected with, securities, goods and forward contracts;;

(12) in clause (90a), the Explanation occurring at the end shall be numbered as Explanation 1 thereof, and after the Explanation 1 as so numbered, the following Explanation shall be inserted, namely:--

Explanation 2.-- For the removal of doubts, it is hereby declared that for the purposes of this clause renting of immovable property includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property;;

(13) in clause (92), for the words to a client, the words to any person shall be substituted;

(14) in clause (105),--

(a) in sub-clauses (e), (h), (j), (k), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zc), (zi), (zj), (zu), (zzt) and (zzw), for the words to a client, occurring at the beginning, the words to any person shall be substituted;

(b) in sub-clauses (f), (l), (zb), (zh), (zm), (zo), (zq), (zt), (zz), (zzd), (zzg), (zzp), (zzv) and (zzx), for the words to a customer, occurring at the beginning, the words to any person shall be substituted;

(c) for sub-clause (g), the following sub-clause shall be substituted, namely:--

(g) to any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering.

Explanation.-- For the purposes of this sub-clause, it is hereby declared that services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this sub-clause;;

(d) in sub-clause (m), for the words a client and the client, wherever they occur, the words any person and such person shall respectively be substituted;

(e) for sub-clause (zzk), the following sub-clause shall be substituted, namely:--

(zzk) to any person, by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorised money changer, other than a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern referred to in sub-clause (zm);;

(f) in sub-clause (zzzu), for the words internet telephony, the words internet telecommunication service shall be substituted;

(g) after sub-clause (zzzzd), the following sub-clauses shall be inserted, namely:--

(zzzze) to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including,--

(i) development of information technology software,

(ii) study, analysis, design and programming of information technology software,

(iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,

(iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software,

(v) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,

(vi) acquiring the right to use information technology software supplied electronically;

(zzzzf) to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

Explanation.-- For the purposes of this sub-clause,--

(i) management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business; and

(ii) the gross amount charged by the insurer from the policy holder for the said services provided or to be provided shall be equivalent to the difference between,--

(a) premium paid by the policy holder for the Unit Linked Insurance Plan policy; and

(b) the sum of premium paid for or attributable to risk cover, whether for life, health or other specified purposes, and the amount segregated for actual investment.

Illustration

Total premium paid for the Unit Linked Insurance Plan policy = Rs. 100

Risk premium = Rs. 10

Amount actually invested = Rs. 85

Gross amount charged for the service provided = Rs. 5 [100-(10+85)];

(iii) in addition to the amount referred to in clause (ii), the gross amount charged shall include any amount charged subsequently, whether or not periodically, by the insurer from the policy holder in relation to management of investment under unit linked insurance business;

(zzzzg) to any person, by a recognised stock exchange in relation to assisting, regulating or controlling the business of buying, selling or dealing in securities and includes services provided in relation to trading, processing, clearing and settlement of transactions in securities;

(zzzzh) to any person, by a recognised association or a registered association in relation to assisting, regulating or controlling the business of the sale or purchase of any goods or forward contracts and includes services provided in relation to trading, processing, clearing and settlement of transactions in goods or forward contracts;

(zzzzi) to any person, by a processing and clearinghouse in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts including any other matter incidental to, or connected with, such securities, goods and forward contracts;

(zzzzj) to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances;;

(15) in clause (106), after the words goods or material or, the words information technology software or shall be inserted;

(16) in clause (108), for the words process or material, at both the places where they occur, the words process or material or information technology software shall be substituted;

(17) in clause (109a), in sub-clause (c), for the words internet telephony, the words internet telecommunication service shall be substituted;

(18) for clause (11 5), the following clause shall be substituted, namely:--

(115) tour operator means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988(59 of 1988) or the rules made thereunder.

Explanation.-- For the purposes of this clause, the expression tour does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field;;

(B) in section 66, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for the word, brackets and letters and (zzzzd), the brackets, letters and word (zzzzd), (zzzze), (zzzzf), (zzzzg), (zzzzh), (zzzzi) and (zzzzj) shall be substituted;

(C) in section 67, in the Explanation, in clause (c), for the words book adjustment., the following words shall be substituted, namely:--

book adjustment, and any amount credited or debited, as the case may be, to any account, whether called Suspense account or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.;

(D) after section 70, the following sections shall be inserted, namely:--

71. Scheme for submission of Returns through Service Tax Preparers-

(1) Without prejudice to the provisions of section 70, the Board may, by notification in the Official Gazette, frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70, and authorise a Service Tax Return Preparer to act as such under the Scheme.

(2) A Service Tax Return Preparer shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.

(3) For the purposes of this section,--

(a) Service Tax Return Preparer means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section;

(b) person or class of persons means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.

(4) The Scheme framed by the Board under this section may provide for the following, namely:--

(a) the manner in which and the period for which the Service Tax Return Preparer shall be authorised under sub-section (1);

(b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer;

(c) the code of conduct for the Service Tax Return Preparer;

(d) the duties and obligations of the Service Tax Return Preparer;

(e) the circumstances under which the authorisation given to a Service Tax Return Preparer may be withdrawn;

(f) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.

72. Best judgment assessment -

If any person, liable to pay service tax,--

(a) fails to furnish the return under section 70;

(b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an

opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.;

(E) for section 77, the following section shall be substituted, namely:--

77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere-

(1) Any person,--

(a) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to five thousand rupees;

(c) who fails to--

(i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or

(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or

(iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to five thousand rupees;

(e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to five thousand rupees.

(2) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to five thousand rupees.;

(F) in section 78, after the fourth proviso, the following proviso shall be inserted, namely:--

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

(G) in section 83, after the figures and letter 35F, the figures and letters 35FF, shall be inserted;

(H) in section 86,--

(i) in sub-section (2), the following proviso shall be inserted at the end, namely:--

Provided that where the Committee of Chief Commissioners of Central Excise differs in its opinion against the order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise is not legal or proper, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.;

(ii) in sub-section (2A), the following proviso and Explanation shall be inserted at the end, namely:--

Provided that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.

Explanation.-- For the purposes of this sub-section, jurisdictional Chief Commissioner means the Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.;

(I) in section 94, in sub-section (4), for the words Chapter and every notification, the words and figures Chapter, Scheme framed under section 71 and every notification shall be substituted.

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

(1E) 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, 2008, 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, 2008 receives the assent of the President..

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