

## Finance Act 1997

### Section 88 - Amendment of Act 32 of 1994

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In the Finance Act, 1994, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, -

(1) for section 65, the following section shall be substituted, namely :-

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

(1) "advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas;

(2) "advertising agency" means any commercial concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

(3) "air travel agent" means any person engaged in providing any service connected with the booking of passage for travel by air;

(4) "Appellate Tribunal" means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962);

(5) "assessee" means a person responsible for collecting the service tax and includes his agent;

(6) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(7) "cab" means a motor cab or maxi cab;

(8) "caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion;

(9) "Central Excise Officer" has the meaning assigned to it in clause (b) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(10) "clearing and forwarding agent" means any person who is engaged in providing any service, either directly or indirectly, connected with clearing and forwarding operations in any manner to any other person and includes a consignment agent;

(11) "consulting engineer" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering;

(12) "courier agency" means a commercial concern 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;

(13) "custom house agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962 (52 of 1962);

(14) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

(15) "goods" has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930 (3 of 1930);

(16) "goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(17) "goods transport operator" means any commercial concern engaged in the transportation of goods but does not include a courier agency;

(18) "insurer" means any person carrying on the general insurance business in India;

(19) "mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 (4 of 1882), and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organising any official, social or business function;

(20) "mandap keeper" means a person who allows temporary occupation of a mandap for consideration for organising any official, social or business function;

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

(22) "maxi cab" has the meaning assigned to it in clause (22) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(23) "motor cab" has the meaning assigned to it in clause (25) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

- (24) "outdoor caterer" means a caterer engaged in providing services in connection with catering at a place other than his own;
- (25) "pager" means an instrument, apparatus or appliance which is a non-speech, one way personal calling system with alert and has the capability of receiving, storing and displaying numeric or alpha-numeric messages;
- (26) "pandal or shamiana" means a place specially prepared or arranged for organising an official, social or business function;
- (27) "pandal or shamiana contractor" means a person engaged in providing any service, either directly or indirectly, in connection with the preparation, arrangement, erection or decoration of a pandal or shamiana and includes the supply of furniture, fixtures, lights and lighting fittings, floor coverings and other articles for use therein;
- (28) "person responsible for collecting the service tax" means a person who is required to collect service tax under this Chapter or is required to pay any other sum of money under this Chapter and includes every person in respect of whom any proceedings under this Chapter have been taken;
- (29) "policy-holder" has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938 (4 of 1938);
- (30) "prescribed" means prescribed by rules made under this Chapter;
- (31) "recognised stock exchange" has the meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (32) "rent-a-cab scheme operator" means a person who is the holder of a licence under the Rent a Cab Scheme, 1989 framed by the Central Government under the Motor Vehicles Act, 1988 (59 of 1988);
- (33) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (34) "service tax" means tax chargeable under the provisions of this Chapter;
- (35) "ship" means a sea-going vessel and includes a sailing vessel;
- (36) "shipping line" means any person who owns or charters a ship and includes an enterprise which operates or manages the business of shipping;
- (37) "steamer agent" means any person who undertakes, either directly or indirectly, -
- (a) to perform any service in connection with the ship's husbandry or dispatch including the rendering of administrative work related thereto; or
  - (b) to book, advertise or canvass for cargo for or on behalf of a shipping line; or
  - (c) to provide container feeder services for or on behalf of a shipping line;
- (38) "stock-broker" means a stock-broker who has either made an application for registration or is registered as a stock-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (39) "sub-broker" means a sub-broker who has either made an application for registration or is registered as a sub-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (40) "subscriber" means a person to whom a telephone connection or pager has been provided by the telegraph authority;
- (41) "taxable service" means any service provided, -
- (a) to an investor, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange;
  - (b) to a subscriber, by the telegraph authority in relation to a telephone connection;
  - (c) to a subscriber, by the telegraph authority in relation to a pager;
  - (d) to a policy holder, by an insurer carrying on general insurance business in relation to general insurance business;
  - (e) to a client, by an advertising agency in relation to advertisements in any manner;
  - (f) to a customer, by a courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles;
  - (g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering;
  - (h) to a client, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods;

(i) to a shipping line, by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services;

(j) to a client, by a clearing and forwarding agent in relation to clearing and forwarding operations in any manner;

(k) to a client, by a manpower recruitment agency in relation to the recruitment of manpower in any manner;

(l) to a customer, by an air travel agent in relation to the booking of passage for travel by air;

(m) to a customer, by a goods transport operator in relation to carriage of goods by road in a goods carriage;

(n) to a client, by an outdoor caterer;

(o) to a client, by a pandal or shamiana contractor in relation to a pandal or shamiana in any manner and also includes the services, if any, rendered as a caterer;

(p) to a client, by a mandap keeper in relation to use of a mandap in any manner including the facilities provided to the client in relation to such use and also the services, if any, rendered as a caterer;

(q) to any person, by a tour operator in relation to a tour;

(r) to any person, by a rent a cab scheme operator in relation to the renting of a cab;

(42) "telegraph authority" has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885), and includes a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of that Act;

(43) "tour" means a journey from one place to another irrespective of the distance between such places;

(44) "tour operator" means a person who holds a tourist permit granted under the rules made under the Motor Vehicles Act, 1988 (59 of 1988);

(45) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944), or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to duty of excise.'

(2) for section 66, the following section shall be substituted, namely :-

"66. Charge of service tax. -

(1) On and from the date of commencement of this Chapter, there shall be charged a tax (hereinafter referred to as the service tax), at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (a), (b) and (d) of clause (41) of section 65 which are provided to any person by the person responsible for collecting the service tax.

(2) With effect from the date notified under section 85 of the Finance (No. 2) Act, 1996 (33 of 1996), there shall be charged a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (c), (e) and (f) of clause (41) of section 65 which are provided to any person by the person responsible for collecting the service tax.

(3) With effect from the date notified under section 84 of the Finance Act, 1997, there shall be charged a service tax at the rate of five per cent. of the value of the taxable services referred to in sub-clauses (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) and (r) of clause (41) of section 65 which are provided to any person by the person responsible for collecting the service tax.";

(3) in section 67, after clause (e), the following clauses shall be inserted, namely :-

"(f) in relation to service provided by a consulting engineer to a client, shall be the gross amount charged by such engineer from the client for advice, consultancy or technical assistance in any manner in one or more disciplines of engineering;

(g) in relation to service provided by a custom house agent to a client, shall be the gross amount charged by such agent from the client for services rendered in any manner in relation to the entry or departure of conveyances or in relation to the import or export of goods;

(h) in relation to service provided by a steamer agent to a shipping line, shall be the gross amount charged by such agent from the shipping line for services in relation to a ship's husbandry or dispatch or any administrative work related thereto or in relation to the booking, advertising or canvassing of cargo, container feeder services, including the commission paid to such agent;

(i) in relation to service provided by a clearing and forwarding agent to a client, shall be the gross amount charged by such agent from the client for services of clearing and forwarding operations in any manner;

- (j) in relation to service provided by a manpower recruitment agency to a client, shall be the gross amount charged by such agency from the client in relation to the recruitment of manpower in any manner;
- (k) in relation to service provided by an air travel agent to a customer, shall be the gross amount charged by such agent from the customer for services in relation to the booking of passage for travel by air excluding the airfare but including the commission, if any, received from the airline in relation to such booking;
- (l) in relation to service provided by good transport operator to a customer, shall be the gross amount charged by such operator for services in relation to carrying goods by road in a goods carriage and includes the freight charges but does not include any insurance charges;
- (m) in relation to service provided by an outdoor caterer to a client, shall be the gross amount charged by such caterer from the client for services in relation to such catering including the charges for food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements provided to such client for any purpose or on any occasion;
- (n) in relation to service provided by a pandal or shamiana contractor to a client, shall be the gross amount charged by such contractor from the client for services in relation to the setting up of a pandal or shamiana including the supply of furniture, fixtures, lights and lighting fittings, floor coverings and similar articles used therein and also the charges for catering, if any;
- (o) in relation to service provided by a mandap keeper to a client, shall be the gross amount charged by such keeper from the client for the use of mandap including the facilities provided to the client in relation to such use and also the charges for catering, if any;
- (p) in relation to service provided by a tour operator to a client, shall be the gross amount charged by such operator from the client for services in relation to a tour and includes the charges for any accommodation, food or any other facilities provided in relation to such tour;
- (q) in relation to the service provided by a rent a cab scheme operator to any person, shall be the gross amount charged by such operator from such person for services in relation to the renting of a cab and includes such rental.";

(4) for section 68, the following section shall be substituted, namely :-

"68. Collection and recovery of service tax. -

(1) Every person providing taxable service to any person shall collect the service tax at the rate specified in section 66.

(1A) Notwithstanding anything contained in sub-section (1) of section 68, in respect of the taxable service referred to in items (g) to (r) or sub-clause (41) of section 65, the service tax for such service shall be collected from such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person responsible for collecting the service tax in relation to such service.

(2) The service tax collected during any calendar month in accordance with the provisions of sub-section (1) or sub-section (1A), as the case may be, shall be paid to the credit of the Central Government by the 15th of the month immediately following the said calendar month.

(3) Any person, responsible for collecting the service tax, who fails to collect the tax in accordance with the provisions of sub-section (1), or sub-section (1A), as the case may be, shall, notwithstanding such failure, be liable to pay such tax to the credit of the Central Government within seventy-five days from the end of the month in which the service was rendered.";

(5) in section 76, -

(i) in the opening portion, for the words, brackets and figures "sub-section (1) of section 68", the words, brackets, figures and letter "sub-section (1) or sub-section (1A) of section 68, as the case may," shall be substituted;

(ii) in clause (b), for the words, brackets and figure "sub-section (2)", the words, brackets and figures "sub-section (2) or who fails to pay the service tax in accordance with sub-section (3)" shall be substituted;

(iii) in clause (ii), for the word, brackets and figure "sub-section (2)", the words, brackets and figures "sub-section (2) or, as the case may be, sub-section (3)" shall be substituted.

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