

Finance Act, 2011, (Central)

Section 74 - Amendment of Act 32 of 1994

In the Finance Act, 1994,--

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

(1) clause (9) shall be omitted;

(2) for clause (25a), the following clauses shall be substituted, namely:--

(25a) clinical establishment means--

(i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called, owned, established, administered or managed by any person or body of persons, whether incorporated or not, having in its establishment the facility of central air-conditioning either in whole or in part of its premises and having more than twenty-five beds for in-patient treatment at any time during the financial year, offering services for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine; or

(ii) an entity owned, established, administered or managed by any person or body of persons, whether incorporated or not, either as an independent entity or as a part of any clinical establishment referred to in sub-clause (i), which carries out diagnosis of diseases through pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment,

but does not include an establishment, owned or controlled by--

(a) the Government; or

(b) a local authority;

(25aa) club or association means any person or body of persons providing services, facilities or advantages, primarily to its members, for a subscription or any other amount, 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; ;

(3) in clause (27), the portion beginning with the words but does not include and ending with the words time being in force shall be omitted;

(4) in clause (104c), for the words operational assistance for marketing , the words operational or administrative assistance in any manner shall be substituted;

(5) in clause (105),--

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

(zo) to any person, by any other person, in relation to any service for repair, reconditioning, restoration or decoration or any other similar services, of any motor vehicle other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage; ;

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

(zx) to a policy holder or any person, by an insurer, including re-insurer carrying on life

insurance business; ;

(c) in sub-clause (zzze), after the words to its members, , the words or any other person shall be inserted;

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

(zzzzm) (i) to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner;

(ii) to any business entity, by any person, in relation to representational services before any court, tribunal or authority;

(iii) to any business entity, by an arbitral tribunal, in respect of arbitration.

Explanation.--For the purposes of this item, the expressions arbitration and arbitral tribunal shall have the meanings respectively assigned to them in the Arbitration and Conciliation Act, 1996(26 of 1996); ;

(e) for sub-clause (zzzzo), the following sub-clause shall be substituted, namely:-- (zzzzo) to any person,-

(i) by a clinical establishment; or

(ii) by a doctor, not being an employee of a clinical establishment, who provides services from such premises for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine; ;

(f) after sub-clause (zzzzu), the following sub-clauses shall be inserted, namely:--

(zzzzv) to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;

(zzzzw) to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months; ;

(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 (zzzzu) , the brackets, letters and word , (zzzzu), (zzzzv) and (zzzzw) shall be substituted;

(C) in section 70, in sub-section (1), for the words two thousand rupees , the words twenty thousand rupees shall be substituted;

(D) in section 73,--

(i) sub-section (1A) shall be omitted;

(ii) the provisos to sub-section (2) shall be omitted;

(iii) after sub-section (4), the following sub-section shall be inserted, namely:--

(4A) Notwithstanding anything contained in sub-sections (3) and (4), where during the course of any audit, investigation or verification, it is found that any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part, as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under section 75 and penalty equal to one per cent. of such tax, for each month, for the period during which the default continues, up to a maximum of twenty-five per cent. of the tax amount, before service of notice on him and inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the amount so paid and proceedings in respect of the said amount of service tax shall be deemed to have been concluded:

Provided that the Central Excise Officer may determine the amount of service tax, if any, due from such person, which in his opinion remains to be paid by such person and shall proceed to recover such amount in the manner specified in sub-section (1).

Explanation.--For the purposes of this sub-section and section 78, specified records means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records. ;

(E) in section 73B, after the first proviso, the following proviso shall be inserted, namely:--

Provided further that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice issued under sub-section (3) of section 73A or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by three per cent. per annum. ;

(F) in section 75, the following proviso shall be inserted, namely:--

Provided that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by three per cent. per annum. ;

(G) in section 76,--

(i) for the words two hundred rupees , the words one hundred rupees shall be substituted;

(ii) for the words two per cent. , the words one per cent. shall be substituted;

(iii) in the proviso, after the words shall not exceed , the words fifty per cent. of shall be inserted;

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

Illustration

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

1% of the amount of default for 10 days

$1/100 \times 10,00,000 \times 10/31$ Rs.3,225.80

Penalty calculated @ Rs.100 per day for 10 days = Rs.1,000

Penalty liable to be paid is Rs. 3226.00. ;

(H) in section 77, for the words five thousand rupees wherever they occur, the words ten thousand rupees shall be substituted;

(I) for section 78, the following section shall be substituted, namely:--

78.(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of--

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax,

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

Provided that where true and complete details of the transactions are available in the specified records, penalty shall be reduced to fifty per cent. of the service tax so not levied or paid or short-

levied or short-paid or erroneously refunded:

Provided further that where such service tax and the interest payable thereon is paid within thirty days from the date of communication of order of the Central Excise Officer determining such service tax, the amount of penalty liable to be paid by such person under the first proviso shall be twenty-five per cent. of such service tax:

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

Provided also that in case of a service provider whose value of taxable services does not exceed sixty lakh rupees during any of the years covered by the notice or during the last preceding financial year, the period of thirty days shall be extended to ninety days.

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

Provided that in case where the service tax to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the second proviso to sub-section (1), shall be available, if the amount of service tax so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days or ninety days, as the case may be, of communication of the order by which such increase in service tax takes effect:

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

Explanation.--For the removal of doubts, it is hereby declared that any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the second proviso to sub-section (1) or the first proviso to sub-section (2) shall be adjusted against the total amount due from such person. ;

(J) in section 80, for the word and figures section 78 , the words and figures first proviso to subsection (1) of section 78 shall be substituted;

(K) in section 82, in sub-section (1),--

Penalty for suppressing, etc., of value of taxable services.

(i) for the words Commissioner of Central Excise , the words Joint Commissioner of Central Excise shall be substituted;

(ii) for the words Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise , the words Superintendent of Central Excise shall be substituted;

(L) in section 83,--

(i) for the figures and letters 9C, 9D, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 14AA, 15, 33A, 35F", the figures and letters 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 14AA, 15, 33A, 34A, 35F shall be substituted;

(ii) after the figures and letter 35Q , the figures and letter 35R shall be inserted and shall be deemed to have been inserted with effect from the 20th day of October, 2010;

(M) after section 87, the following sections shall be inserted, namely:--

88. Liability under Act to be first charge.--Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956(1 of 1956) and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993(51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002(54 of 2002), be the first charge on the property of the assessee or the person as the case may be.

89. Offences and penalties.-- (1) Whoever commits any of the following offences, namely,--

(a) provides any taxable service chargeable to service tax under sub-section (1) of section 68 or receives any taxable service chargeable to tax under sub-section (2) of said section, without an invoice issued in accordance with the provisions of this Chapter or the rules made thereunder; or

(b) avails and utilises credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due,

shall be punishable,--

(i) in the case of an offence where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

(ii) in any other case, with imprisonment for a term, which may extend to one year.

(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to three years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term less than six months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:--

(i) the fact that the accused has been convicted for the first time for an offence under this Chapter;

(ii) the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;

(iv) the age of the accused.

(4) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise. ;

(N) in section 93A, in the proviso, after the words such rebate shall , the words , except under such circumstances or such conditions as may be prescribed, shall be inserted;

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

(1H) 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, 2011, 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, 2011 receives the assent of the President. ;

(P) after section 96-I, the following section shall be inserted, namely:--

96J. Special exemption from service tax in certain cases.--(1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of membership fee collected by a club or association formed for representing industry or commerce, during the period on and from the 16th day of June, 2005 to the 31st day of March, 2008 (both days inclusive).

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected if sub-section (1) had been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2011 receives the assent of the President. .