Finance (No. 2) Act, 2004

Chapter 5 - Service Tax

In theFinance Act, 1994,--

(a) insection 65,--

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

'(3a)"aircraft" has the meaning assigned to it in clause (1) of section 2of the Aircraft Act, 1934(22 of 1934);

(3b)"aircraft operator" means any commercial concern which provides theservice of transport of goods by aircraft;

(3c)"airport" has the meaning assigned to it in clause (b) of section 2of the Airports Authority of India Act, 1994(55 of 1994);

(3d)"airports authority" means the Airports Authority of Indiaconstituted under section 3 of the Airports Authority of India Act, 1994(55 of1994) and also includes any person having the charge of management of anairport or a civil enclave;';

(ii) forclause (12), the following clause shall be substituted, namely:--

(12)"banking and other Financial services" means--

(a) thefollowing services provided by a banking company or a financial institutionincluding a non-banking financial company or any other body corporate orcommercial concern, namely:--

(i)financial leasing services including equipment leasing and hire-purchase;

(ii)credit card services;

(iii)merchant banking services;

(iv)securities and foreign exchange (forex) broking;

(v)asset management including portfolio management, all forms of fund management,pension fund management, custodial, depository and trust services, but does notinclude cash management;

(vi)advisory and other auxiliary financial services including investment andportfolio research and advice, advice on mergers and acquisitions and advice oncorporate restructuring and strategy;

(vii)provision and transfer of information and data processing; and

(viii)other financial services, namely, lending; issue of pay order, demand draft,cheque, letter of credit and bill of exchange; providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults;operation of bank accounts;

(b)foreign exchange broking provided by a foreign exchange broker other than thosecovered under sub-clause (a);';

(iii)for clause (19), the following clauses shall be substituted, namely;--

'(19)"business auxiliary service" means any service in relation to--

(i)promotion or marketing or sale of goods produced or provided by or belonging tothe client; or

(ii)promotion or marketing of service provided by the client; or

(ii)any customer care service provided on behalf of the client; or

(iv)procurement of goods or services, which are inputs for the client; or

(v)production of goods on behalf of the client; or

(vi)provision of service on behalf of the client; or

(vii) aservice incidental or auxiliary to any activity specified in sub-clauses (i) to(vi), such as billing, issue or collection or recovery of cheques, payments,maintenance of accounts and remittance, inventory management, evaluation, ordevelopment of prospective customer or vendor, public relation services, managementor supervision, and includes services as a commission agent, but does notinclude any information technology service and any activity that amounts to,"manufacture" within the meaning of clause (f) of section 2 of theCentral Excise Act, 1944(1 of 1944).

Explanation.--Forthe removal of doubts, it is hereby declared that for the purposes of thisclause, "information technology service" means any service inrelation to designing, developing or maintaining of computer software, orcomputerised data processing or system networking, or any other serviceprimarily in relation to operation of computer systems;

(19a)"business exhibition" means an exhibition,--

(a) tomarket; or

(b) topromote; or

(c) toadvertise; or

(d) toshowcase, any product or service, intended for the growth in business of theproducer or provider of such product or service, as the case may be;';

(iv)after Clause (24), the, following clause shall be inserted, namely:--

'(24a)"civil enclave" has the meaning assigned to it in clause (i) ofsection 2 of the Airports Authority of India Act, 1994(55 of 1994);';

(v)clause (28) shall be omitted;

(vi) inclause (29), for the words "in relation to commissioning orinstallation", the words "in relation to erection, commissioning orinstallation" shall be substituted;

(vii)after clause (30), the following clause shall be inserted, namely:--'(30a)"construction service" means,--

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

(b)repair, alteration or restoration of, or similar services in relation to,building or civil structure, which is--

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

(ii)occupied, or to be occupied, primarily with; or (iii)engaged, or, to be engaged, primarily in, commerce or industry, or workintended for commerce or industry, but does not include road, airport, railway,transport terminal, bridge, tunnel, long distance pipeline and dam;';

(viii)after clause (39), the following clause shall be inserted, namely:--

'(39a) "erection,commissioning or installation" means any service provided by acommissioning and installation agency in relation to erection, commissioning orinstallation of plant, machinery or equipment;';

(ix)after clause (46), the following clause shall be inserted, namely:--

'(46a) "forwardcontract" has the meaning assigned to it in clause (c) of section 2 of theForward Contracts (Regulation) Act, 1952(74 of 1952);';

(x) after clause (50), the following clauses shall beinserted, namely:--

'(50a) "goodscarriage" has the meaning assigned to it in clause (14) of section2 of the Motor Vehicles Act, 1988(59 of 1988);

(50b) "goodstransport agency" means any commercial concern which provides service inrelation to transport of goods by road and issues consignment note, by whatevername called;';

(xi)after clause (55), the following clauses shall be inserted, namely:--

'(55a) "intellectualproperty right" means any right to intangible property, namely, trademarks, designs, patents or any other similar intangible property, under any lawfor the time being in force, but does not include copyright;

(55b) "intellectualproperty service" means,--

(a)transferring, whetherpermanently or otherwise; or

(b)permitting the use orenjoyment of, any intellectual property right;';

(xii) after clause (75), the following clauses shall beinserted, namely:--

'(75a) "opinion poll" means any service designedto secure information on public opinion regarding social, economic, politicalor other issues;

(75b) "opinionpoll agency" means any person engaged in providing any service in relationto opinion poll;';

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

'(76a) "outdoorcaterer" means a caterer engaged in providing services in connection withcatering at a place other than his own;';

(xiv) after clause (77), the following clauses shall beinserted, namely:--

'(77a) "pandalor shamiana" means a place specially prepared or arranged for organisingan official, social pr business function;

(77b) "pandalor 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 offurniture, fixtures, lights and lighting fittings, floor coverings and otherarticles for use therein;';

(xv)after clause (86), the following clauses shall be inserted, namely:--

'(86a) "programme"means any audio or visual matter, live or recorded, which is intended to bedisseminated by transmission of electromagnetic waves through space or throughcables intended to be received by the general public either directly orindirectly through the medium of relay stations;

(86b) "programmeproducer" means a commercial concern which produces a programme on behalfof another person;';

(xvi)after clause (89), the following clauses shall be inserted, namely:--

'(89a) "recognisedassociation" has the meaning assigned to it in clause (j) of section 2 ofthe Forward Contracts (Regulation) Act, 1952(74 of 1952);

(89b) "registeredassociation" has the meaning assigned to it in clause (jj) of section 2 ofthe Forward Contracts (Regulation) Act, 1952(74 of 1952);';

(xvii)for clause (101), the following clause shall be substituted, namely:--

'(101) "stock-broker"means a person, who has either made an application for registration or isregistered as a stock-broker or sub-broker, as the case may be, in accordancewith the rules and regulations made under the Securities and Exchange Board ofIndia Act, 1992(15 of 1992);';

(xviii) clause (103) shall be omitted;

(xix) after clause (104), the following clause shall beinserted, namely:--

'(104a) "surveyand exploration of mineral" means geological, geophysical or otherprospecting, surface or sub-surface surveying or map making service, inrelation to location or exploration of deposits of mineral, oil or gas;';

(xx) in clause (105),--

(a)in sub-clause (a), for the words "to aninvestor", the words "to any person" shall be substituted;

(b)in sub-clause (g), after thewords "disciplines of engineering", the words "but not in thediscipline of computer hardware engineering or computer softwareengineering" shall be inserted;

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

"(zm)to a customer, by a bankingcompany or a financial institution including a non-banking financial company,or any other body corporate or commercial concern, in relation to banking andother financial services;";

(d)sub-clause (zp) shall be omitted;

(e)in sub-clause (zs), for the words "to acustomer, by a cable operator", the words "to any person, by a cableoperator, including a multisystem operator;" shall be substituted;

(f) in sub-clause (zx),for the words "in relation to life insurance business", thewords "in relation to the risk cover in life insurance" shall besubstituted;

(g) in sub-clause (zzd),for the words "commissioning or installation", the words"erection, commissioning or installation" shall be substituted;

(h) aftersub-clause (zzl), the followingsub-clauses shall be inserted, namely:--

"(zzm)to any person, by airportsauthority or any person authorised by it, in an airport or a civil enclave;

(zzn)to any person, by anaircraft operator, in relation to transport of goods by aircraft;

(zzo)to an exhibitor, by theorganiser of a business exhibition, in relation to business exhibition;

(zzp)to a customer, by a goodstransport agency, in relation to transport of goods by road in a goodscarriage;

(zzq)to any person, by a commercialconcern, in relation to construction service;

(zzr)to any person, by the holderof intellectual property right, in relation to intellectual property service;

(zzs)to any person, by an opinionpoll agency, in relation to opinion poll;

(zzt)to a client, by an outdoorcaterer;

(zzu)to any person, by aprogramme producer, in relation to a programme;

(zzv) to a customer, by any person, in relation to surveyand exploration of mineral;

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

(zzx)to a customer, by a travelagent, in relation to the booking of passage for travel;

(zzy)to any person, by a memberof a recognised association or a registered association, in relation to aforward contract;";

(xxi) for clause (115), the following clauses shall besubstituted, namely:--

'(115) "touroperator" means any person engaged in the business of planning, scheduling,organising or arranging tours (which may include arrangements foraccommodation, sightseeing or other similar services) by any mode of transport,and includes any person engaged in the business of operating tours in a touristvehicle covered by a permit granted under the Motor Vehicles Act, 1988(59 of1988) or the rules made thereunder;

(115a) "travelagent" means any person engaged in providing any service connected withbooking of passage for travel, but does not include air travel agent and railtravel agent;';

(b) for section 66, the following section shall besubstituted, namely:--

"66. Charge of Service Tax.

There shall be levied a tax (hereinafter referred to as theservice tax) at the rate often per cent. of the value of the taxable servicesreferred to in sub-clauses (a), (b),(c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p),(q), (r), (s), (t), (u), (v), (w), (x),(y), (z), (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk)(zl), (zm), (zn), (zo), (zp), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz), (zza), (zzb), (zzc),(zzd), (zze), (zzf),(zzg), (zzh), (zgi), (zzj), (zzk), (zzl), (zzm), (zzn),(zzo), (zzp), (zzq), (zzr), (zzs),(zzt), (zzu), (zzv), (zzw), (zzx)and (zzy) of clause(105) of section 65 and collected in such manner as may be prescribed.";

(c) in section 67,--

(a) the Explanationshall be numbered as Explanation1, and in the Explanation 1 as so numbered,--

(i) inclause (vi), the word "and" occurring atthe end shall be omitted;

(ii)for clause (vii), thefallowing clauses shall be substituted, namely:--

"(vii) the cost of parts or other material, if any,sold to the customer during the course of providing erection, commissioning orinstallation service; and

(viii) interest on loans.";

(b) after the Explanation1 as so numbered, the following Explanationshall be inserted, namely:--

"Explanation2.-- Where the gross amountcharged by a service provider is inclusive of service tax payable, the value oftaxable service shall be such amount as with the addition of tax payable, isequal to the gross amount charged.";

(d)sections 71 and 72 shall beomitted;

(e)for section 73, thefollowing section shall be substituted, namely:--

'73. Recovery of service tax no leviedor paid or short levied or short-paid or erroneously refunded.

(1) Where any service tax has not been levied or paid orhas been short-levied or short-paid or erroneously refunded, the AssistantCommissioner of Central Excise or, as the case may be, the Deputy Commissionerof Central Excise may, within one year from the relevant date, serve notice onthe person chargeable with the service tax which has not been levied or paid orwhich has been short-levied or short-paid or the person to whom such tax refundhas erroneously been made, requiring him to show cause why he should not paythe amount specified in the notice:

Provided that where any service tax has not been levied orpaid or has been short-levied or short-paid or erroneously refunded by reasonof--

(a) fraud; or

(b)collusion; or

(c) wilful misstatement; or

(d)suppression of facts; or

(e)contravention of any of theprovisions of this Chapter or of the rules made thereunder with intent to evadepayment of service tax, by the person chargeable with the service tax or hisagent, the provisions of this sub-section shall have effect, as if, for thewords "one year", the words "five years" had beensubstituted.

Explanation.--Where the service of thenotice is stayed by an order of a court, the period of such stay shall beexcluded in computing the aforesaid period of one year or five years, as thecase may be.

(2) TheAssistant Commissioner of Central Excise or, as the case may be, the DeputyCommissioner of Central Excise shall, after considering the representation, ifany, made by the person on whom notice is served under subsection (1),determine the amount of service tax due from, or erroneously refunded to, suchperson (not being in excess of the amount specified in the notice) andthereupon such person shall pay the amount so determined.

(3) Where any service tax has not been levied or paid orhas been short-levied or short-paid or erroneously refunded, the personchargeable with the service tax, or the person to whom such tax refund haserroneously been made, may pay the amount of such service tax, chargeable orerroneously refunded, on the basis of his own ascertainment thereof, or on thebasis of tax ascertained by a Central Excise Officer before service of noticeon him under sub-section (1) in respect of such service tax, and inform theAssistant Commissioner of Central Excise or, as the case may be, the DeputyCommissioner of Central Excise of such payment in writing, who, on receipt ofsuch information shall not serve any notice under sub-section (1) in respect ofthe amount so paid:

Provided that the Assistant Commissioner of Central Exciseor, as the case maybe, the Deputy Commissioner of Central Excise may determinethe amount of short-payment of service tax or erroneously refunded service tax,if any, which in his opinion has not been paid by such person and, then, theAssistant Commissioner of Central Excise or, as the case may be, the DeputyCommissioner of Central Excise shall proceed to recover such amount in themanner specified in this section, and the period of "one year"referred to in sub-section (1) shall be counted from the date of receipt ofsuch information of payment.

Explanation.--For the removal of doubts,it is hereby declared that the interest under section 75 shall be payable onthe amount paid by the person under this sub-section and also on the amount ofshort payment of service tax or erroneously refunded service tax, if any, asmay be determined by the Assistant Commissioner of Central Excise or, as thecase may be, the Deputy Commissioner of Central Excise, but for thissub-section.

(4) Nothingcontained in sub-section (3) shall apply to a case where anyservice tax has not been levied or paid or has been short-levied or short-paidor erroneously refunded by reason of--

(a) fraud; or

(b) collusion; or

(c) wilful misstatement; or

(d)suppression of facts; or

(e) contravention of any of the provisions of this Chapteror of the rules made thereunder with intent to evade payment of service tax.

(5) The provisions of sub-section (3) shall not apply toany case where the service tax had become payable or ought to have been paidbefore the 14th day of May, 2003.

(6) For the purposes of this section, "relevantdate" means,--

(i) in the case of taxable service in respect of whichservice tax has not been levied or paid or has been short-levied orshort-paid--

(a) where under the rules made under this Chapter, aperiodical return, showing particulars of service tax paid during the period towhich the said return relates, is to be filed by an assessee, the date on whichsuch return is so filed;

(b)where no periodical returnas aforesaid is filed, the last date on which such return is to be filed underthe said rules;

(c)in any other case, the dateon which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) ina case where the service tax is provisionally assessed under this Chapter orthe rules made thereunder, the date of adjustment of the service tax after thefinal assessment thereof;

(iii) in a case where any sum, relating to service tax, haserroneously been refunded, the date of such refund.';

(f) in section 74,--

(i) in sub-section (4), for the words "an assessment orreducing a refund or otherwise increasing the liability of the assessee",the words "the liability of the assessee or reducing a refund" shallbe substituted;

(ii) in sub-section (6), for the word"assessment", the words "liability of an assessee or increasingthe refund" shall be substituted;

(iii) in sub-section (7), for the word"assessment", the words "liability of the assessee" shallbe substituted;

(g) in section 75, for the words "at the rate offifteen per cent, per annum", the words "at such rate not below tenper cent. and not exceeding thirty-six per cent. per annum, as is for the timebeing fixed by the Central Government, by notification in the OfficialGazette," shall be substituted;

(h) section 75A shall be omitted;

(i) in section 76, for the words "one hundredrupees", the words "one hundred rupees for every day during whichsuch failure continues" shall be substituted;

(j) for section 77, the following section shall besubstituted, namely:--

"77. Penalty for contravention of any provision forwhich no penalty is provided.

Whoever contravenes any of the provisions of this Chapteror any rule made thereunder for which no penalty is separately provided in thisChapter, shall be liable to a penalty which may extend to an amount notexceeding one thousand rupees.";

(k) in section 78, for the portion beginning with the words"If the Assistant Commissioner" and ending with the words "valueof such taxable service:", the following shall be substituted, namely:--

"Where any service tax has not been levied or paid orhas 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 theprovisions of this Chapter or of the rules made thereunder with intent to evadepayment of service tax,

the person, liable to pay such service tax or erroneousrefund, as determined under sub-section (2) of section 73, shall also be liableto pay a penalty, in addition to such service tax and interest thereon; if any,payable by him, which shall not be less than, but which shall hot exceed twice,the amount of service tax so not levied or paid or short-levied or short-paidor erroneously refunded:";

(l) section 79 shall be omitted;

(m)in section 80, for the wordsand figures "section 77, section 78 or section 79", the words andfigures "section 77 or section 78" shall be substituted;

(n) section 81 shall be omitted;

(o)in section 85, insub-section (1), the words and figures "section 71, section 72 or"shall be omitted;

(p)in section 86, with effectfrom such date as the Central Government may, by notification in the OfficialGazette, appoint, for sub-section (6), the following subsections shall besubstituted, namely:--

"(6)An appeal to the Appellate Tribunal shall be in the prescribed form and shallbe verified in the prescribed manner and shall, irrespective of the date ofdemand of service tax and interest or of levy of penalty in relation to whichthe appeal is made, be accompanied by a fee of,--

(a) where the amount of service tax and interest demandedand penalty levied by any Central Excise Officer in the case to which theappeal relates is five lakh rupees or less, one thousand rupees;

(b)where the amount of service-taxand interest demanded and penalty levied by any Central Excise Officer in thecase to which the appeal relates is more than five lakh rupees but notexceeding fifty lakh rupees, five thousand rupees;

(c)where the amount of servicetax and interest demanded and penalty levied by any Central Excise Officer inthe case to which the appeal relates is more than fifty lakh rupees, tenthousand rupees:

Provided that no fee shall be payable in the case of anappeal referred to in sub-section (2) or sub-section (2A) or amemorandum of cross-objections referred to in sub-section (4).

(6A) Everyapplication made before the Appellate Tribunal,--

(a)in an appeal for grant ofstay or for rectification of mistake or for any other purpose; or

(b)for restoration of an appealor an application, shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case ofan application filed by the Commissioner of Central Excise or AssistantCommissioner of Central Excise or Deputy Commissioner of Central Excise, as thecase may be under this sub-section.".

(q)in section 94, insub-section (2), for clause (f), the following clauses shall be substituted,namely:--

"(f) provisions for determining export of taxableservices;

(g)grant of exemption to, or rebate of service tax paid on, taxable services whichare exported out of India;

(h) rebateof service tax paid or payable on the taxable services consumed or duties paidor deemed to have been paid on goods used for providing taxable services whichare exported out of India;

(i) any other matter which by this Chapter is to be or maybe prescribed.";

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

"(1B) If any difficulty arises in respect of implementing, orassessing the value of, any taxable service incorporated in this Chapter by theFinance (No. 2) Act, 2004, the Central Government may, by order published inthe Official Gazette, not inconsistent with the provisions of this Chapter,remove the difficulty:

Provided that no such order shall be made after the expiryof a period of two years from the date on which the Finance (No. 2) Bill, 2004receives the assent of the President."