

Finance (No. 2) Act, 2004

Section 90 - Amendment of Act 32 of 1994

In the Finance Act, 1994,--

(a) in section 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 2 of the Aircraft Act, 1934 (22 of 1934);

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

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

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

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

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

(a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial 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 not include cash management;

(vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate 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 those covered 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 to the 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) a service 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, or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any information technology service and any activity that amounts to, "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).

Explanation.--For the removal of doubts, it is hereby declared that for the purposes of this clause, "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems;

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

(a) to market; or

(b) to promote; or

(c) to advertise; or

(d) to showcase, any product or service, intended for the growth in business of the producer 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) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994);';

(v)clause (28) shall be omitted;

(vi) in clause (29), for the words "in relation to commissioning or installation", the words "in relation to erection, commissioning or installation" 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 or installation 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 be inserted, 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 be inserted, 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 be inserted, 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 be disseminated by transmission of electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations;

(86b) "programme producer" means a commercial concern which produces a programme on behalf of another person;';

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

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

(89b) "registered association" has the meaning assigned to it in clause (jj) of section 2 of the 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 is registered as a stock-broker or sub-broker, as the case may be, in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);';

(xviii) clause (103) shall be omitted;

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

'(104a) "survey and exploration of mineral" means geological, geophysical or other prospecting, surface or sub-surface surveying or map making service, in relation to location or exploration of deposits of mineral, oil or gas;';

(xx) in clause (105),--

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

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

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

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

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

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

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

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

(h) after sub-clause (zzl), the following sub-clauses shall be inserted, namely:--

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

(zzn) to any person, by an aircraft 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 of ten 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) in clause (vi), the word "and" occurring atthe end shall be omitted;

(ii)for clause (vii), thefollowing 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 or installation service; and

(viii) interest on loans.";

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

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

(d) sections 71 and 72 shall be omitted;

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

'73. Recovery of service tax not levied or paid or short levied or short-paid or erroneously refunded.

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

Provided that 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 misstatement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted.

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

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

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise 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:

Provided that the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise may determine the 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, the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise shall proceed to recover such amount in the manner specified in this section, and the period of "one year" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

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

(4) Nothing contained in sub-section (3) shall apply to a case 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 misstatement; or

(d) suppression of facts; or

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

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

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

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

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

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

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

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

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

(f) in section 74,--

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

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

(iii) in sub-section (7), for the word "assessment", the words "liability of the assessee" shall be 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-tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of service-tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

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

(6A) Every application made before the Appellate Tribunal,--

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

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

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

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

"(f) provisions for determining export of taxable services;

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

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

(i) any other matter which by this Chapter is to be or may be 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, or assessing the value of, any taxable service incorporated in this Chapter by the Finance (No. 2) Act, 2004, 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 two years from the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President."