

Finance (No. 2) Act, 1998

Section 116 - Amendment of Act 32 of 1994

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. Definitions. 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;
- (5) "architect" means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture;
- (6) "assessee" means a person liable to pay the service tax and includes his agent;
- (7) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;
- (8) "body corporate" shall have the meanings assigned to it in or under clause (7) of section 2 of the Companies Act, 1956;
- (9) "cab" means a motor cab or maxi cab;
- (10) "caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar or accoutrements for any purpose or occasion;
- (11) "Central Excise Officer" has the meaning assigned to it in clause (b) of section 2 of the Central Excise Act, 1944.
- (12) "clearing and forwarding agent" means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent;
- (13) "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;
- (14) "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;

(15) "credit rating agency" means any commercial concern engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and includes credit rating of any financial obligation, instrument of security, which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal;

(16) "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;

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

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

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

(20) "interior decorator" means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of spaces, whether man-made or otherwise and includes a landscape designer;

(21) "management consultant" means any person who is engaged in providing any service either directly or indirectly, in connection with the management of any organisation in any manner and includes any person who renders any advice, consultancy or technical assistance, relating to conceptualising, devising, development, modification, rectification or upgradation of any working system of any organisation;

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

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

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

(25) "market research agency" means any commercial concern engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customised and syndicated research services;

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

(27) "mechanised slaughter house" means a commercial concern engaged in the business of slaughtering of animals with the aid of machines;

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

(29) "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;

(30) "policy holder" has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938;

(31) "practising chartered accountant" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy;

(32) "practising cost accountant" means a person who is a member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and Works Accountants Act, 1959 and includes any concern engaged in rendering services in the field of cost accountancy;

(33) "practising company secretary" means a person who is a member of the institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of company secretaryship;

(34) "prescribed" means prescribed by rules made under this Chapter;

(35) "real estate agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant;

(36) "real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception design, development, construction, implementation, supervision, maintenance, marketing acquisition or management, of real estate;

(37) "recognised stock exchange" has the meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(38) "rent-a-cab scheme operator" means any person engaged in the business of renting of cabs;

(39) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(40) "security agency" means any commercial concern engaged in the business in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel;

(41) "service tax" means tax leviable under the provisions of this chapter;

(42) "ship" means a sea-going vessel and includes a sailing vessel;

(43) "shipping line" means any person who owns or charters a ship and includes an enterprise which operates or manages the business of shipping;

(44) "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 canvas 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;

(45) "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;

(46) "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;

(47) "subscriber" means a person to whom a telephone connection a pager has been provided by the telegraph authority;

(48) "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 connections;

(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 advertisement 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 client, by a mandap keeper in relation to the 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;

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

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

(p) to a client, by an architect in his professional capacity in any manner;

(q) to a client, by an interior decorator in relation to planning, design or beautification of spaces, whether man-made or otherwise, in any manner;

(r) to a client, by a management consultant in connection with the management of any organisation in any manner;

(s) to a client, by a practising chartered accountant in his professional capacity, in any manner;

(t) to a client, by a practising cost accountant in his professional capacity, in any manner;

(u) to a client, by a practising company secretary in his professional capacity, in any manner;

(v) to a client, by a real estate agent in relation to real estate;

(w) to a client, by a security agency in relation to the security of any property or person, by providing security personal or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity;

(x) to a client, by a credit rating agency in relation to credit rating of any financial obligation, instrument or security;

(y) to a client, by a market research agency in relation to market research of any product, service or utility, in any manner;

(z) to a client, by an underwriter in relation to underwriting in any manner;

(za) to any person, by a mechanised slaughter house in relation to the slaughtering of bovine animals;

(49) "telegraph authority" has the meaning assigned to it in clause (6) of section 3 of the India Telegraph Act, 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;

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

(51) "tourist vehicle" has the meanings assigned to it in clause (43) of section 2 of the Motor Vehicles Act, 1988;

(52) "tour operator" means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicle Act, 1988 or the rules made thereunder;

(53) "underwriter" has the meaning assigned to it clause (f) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993;

(54) "underwriting" has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993

(55) words and expressions used but not defined in this chapter and defined in the Central Excise Act, 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. (1) On and from the date of commencement of this Chapter, there shall be levied a tax (hereinafter referred to as the service tax), at the rate of five percent of the value of the taxable services referred to in sub-clauses (a) (b) and (d) of clause (48) of section 65 and collected in such manner as may be prescribed.

(2) With effect from the date notified under section 85 of the Finance (No. 2) Act, 1996, there shall be levied a service tax at the rate of five percent of the value of the taxable services referred to in sub-clauses (c), (e) and (f) of clause (48) of section 65 and collected in such manner as may be prescribed.

(3) With effect from the date notified under section 88 of the Finance Act, 1997, there shall be levied a service tax at the rate of five percent of the value of the taxable service referred to in sub-clause (g), (h), (i), (j), (k), (l), (m), (n) or (o) of clause (48) of section 65 and collected in such manner as may be prescribed.

(4) With effect from the date notified under section 116 of the Finance (No. 2) Act, 1998, there shall be levied a service tax at the rate of five percent of the value of the taxable services referred

to in sub-clause (p), (q), (r), (s), (t), (u), (v), (w), (x), (y) and (z) of clause (48) of section 65 and collected in such manner as may be prescribed.

(5) With effect from the date notified under section 116 of the Finance (No. 2) Act, 1998, there shall be lived a service tax at the rate of one thousand rupees per annum on the taxable service referred to in sub-clause (za) of clause (48) of section 65 and collected in such manner as may be prescribed.";

(3) in section 67.--

(i) in clause (b), for the word "received", the word "charged" shall be substituted;

(ii) in clause (c), for the word "received", the word "charged" shall be substituted;

(iii) clauses (l), (m) and (n) shall be omitted;

(iv) clauses (o), (p) and (q) shall respectively be relettered as clauses (l), (m) and (n) respectively;

(v) after clause (n) as so relettered, the following clauses shall be inserted, namely:-

"(o) in relation the service provided by an architect to a client, shall be the gross amount charged by such architect from the client for services rendered in professional capacity in any manner.

(p) in relation to the service provided by an interior decorator to a client, shall be the gross amount charged by such decorator from the client for services rendered in relation to planing, design or beautification of spaces in any manner;

(q) in relation to the service provided by a management consultant to a client, shall be the gross amount charged by such consultant from the client for services rendered in connection with the management of any organization in any manner;

(r) in relation to the service provided by a practising chartered accountant to a client, shall be the gross amount charged by such accountant from the client for services rendered in professional capacity in any manner;

(s) in relation to the service provided by a practising cost accountant to a client, shall be the gross amount charged by such accountant from the client for services rendered in professional capacity in any manner;

(t) in relation to the service provided by a practising company secretary to a client, shall be the gross amount charged by such secretary from the client fro services rendered in professional capacity in any manner;

(u) in relation to the service provided by a real estate agent to a client, shall be the gross amount charged by such agent from the client for services rendered in connection with the sale, purchase, leasing or renting of real estate including any advice, consultancy or technical assistance relating to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate;

(v) in relation the service provided by a security agency to a client, shall be the gross amount charged by such agency from the client for services rendered in connection with the security of any property or person, and includes services of investigation, detection or verification of any fact or activity including services of providing security personnel;

(w) in relation to the service provided by a credit rating agency to a client, shall be the gross amount charged by such agency from the client for services rendered in connection with credit rating of any financial obligation, instrument or security in any manner;

(x) in relation the service provided by a market research agency to a client, shall be the gross amount charged by such agency from the client for services rendered in connection with market research of any product, service or utility in any manner;

(y) in relation to the service provided by an underwriter to a client, shall be the gross amount charged by such underwriter from the client fro services rendered in relation to underwriting in any manner.";

(4) for sections 68 to 71, the following sections shall be substituted, namely:-

"68. Payment of service tax.-- (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by 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 liable for paying the service tax in relation to such service.

69. Registration.--Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration t the Central Excise Officer.

70. Furnishing of returns.--Every person liable to pay the service tax shall furnish or cause to be furnished to the Central Excise Officer, a return in such form and in such manner and at such frequency as may be prescribed.

71. Assessment.--(1) For the purpose of making an assessment under this Chapter, the Central Excise Officer may serve on any person who has furnished a return under section 70, a notice requiring him to produce within such period as may be specified therein, such accounts, documents or other evidence as he may deem necessary for such assessment.

(2) The Central Excise Officer, after considering such accounts, documents or other evidence, if any, obtained under sub-section (1) and after taking into account any relevant material which he was gathered, shall, by an order in writing, assess the value of the taxable service and the amount of service tax payable on the basis of such assessment.";

(5) in section 72, for clause (a), the following clause shall be substituted, namely:--

"(a) any person fails to make the return under section 70, or";

(6) in section 73,--

(a) for the word "quarter", wherever it occurs, the words "prescribed period" shall be substituted;

(b) for the words, brackets and figures "serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 70 and may proceed to assess or reassess the value of the taxable service, and the provision of this Chapter shall, so far as may be, apply, as if the notice were a notice issued under that sub-section", the words "serve on the assessee a notice and proceed to assess or reassess the value of the taxable service" shall be substituted;

(7) for sections 75 to 77, the following sections shall be substituted, namely:--

75. Interest on delayed payment of service tax.-- Every person, liable to pay that tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at the rate of one and one-half per cent. for every month or part of the month by which such crediting of the tax or any part thereof is delayed.

76. Penalty for failure to pay service tax.-- Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made thereunder, who fails to pay such tax shall pay in addition to paying such tax, and interest on that tax in accordance with the provisions of section 75, a penalty which shall not be less than one hundred rupees but which may extend to two hundred rupees for every day during which such failure continues, so, however, that the penalty under this clause shall not exceed the amount of service tax that he failed to pay.

77. Penalty for failure to furnish prescribed return.-- If a person fails to furnish in due time the return which he is required to furnish under Section 70 or the rules made thereunder he shall pay, by way of penalty, a sum which shall not be less than one hundred rupees but which may extend to two hundred rupees for every week or part thereof during which such failure continues.";

(8) in section 82, for the words "if the Central Excise Officer has reason to believe", the words "If the Commissioner of Central Excise has reason to believe" shall be substituted;

(9) in section 83, after the figures and letter "11B", the figures and letters "11BB, 12A" shall be inserted;

(10) sections 87 to 92 shall be omitted;

(11) for section 93, the following section shall be substituted, namely:-

"93. Power to grant exemption from service tax.--(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order.";

(12) In section 94, for sub-section (2), the following sub-section shall be substituted, namely:--

"(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) collection and recovery of service tax under sections 66 and 68;

(b) the time and manner and the form in which application for registration shall be made under section 69;

(c) the form, manner and frequency of the returns to be furnished under section 70;

(d) the form in which appeal under Section 85 or under sub-section (6) of section 86 may be filed and the manner in which they may be verified;

(e) the manner in which the memorandum of cross-objections under sub-sections (4) of section 86 may be verified;

(f) any other matter which by this Chapter is to be or may be prescribed.".