

Finance (No. 2) Act 2009

Chapter V - Service Tax

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) in clause (19),--

(a) for the portion beginning with the words "but does not include" and ending with the words and figures "Central Excise Act, 1944 (1 of 1944)", the words "but does not include any activity that amounts to manufacture of excisable goods" shall be substituted;

(b) in the Explanation, after clause (a), the following clauses shall be inserted, namely:--

'(b) "excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(c) "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);';

(2) in clause (101), the words "or sub-broker, as the case may be," shall be omitted;

(3) in clause (105),--

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

"(zzzp) to any person, by any other person, in relation to transport of goods by rail, in any manner;"

(b) in sub-clause (zzzze), in items (v) and (vi), for the word "acquiring", the word "providing" shall be substituted and shall be deemed to have been substituted with effect from the 16th day of May, 2008;

(c) after sub-clause (zzzzj), the following sub-clauses shall be inserted, namely:--

'(zzzzk) to any person, by any other person, in relation to cosmetic surgery or plastic surgery, but does not include any surgery undertaken to restore or reconstruct anatomy or functions of body affected due to

congenital defects, developmental abnormalities, degenerative diseases, injury or trauma;

(zzzzl) to any person, by any other person, in relation to transport of--

(i) coastal goods;

(ii) goods through national waterway; or

(iii) goods through inland water.

Explanation.-- For the purposes of this sub-clause,--

(a) "coastal goods" has the meaning assigned to it in clause (7) of section 2 of the Customs Act, 1962 (52 of 1962);

(b) "national waterway" has the meaning assigned to it in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 (82 of 1985);

(c) "inland water" has the meaning assigned to it in clause (b) of section 2 of the Inland Vessels Act, 1917 (1 of 1917);

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

Provided that any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

Explanation.--For the purposes of this sub-clause, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual;'

(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 (zzzzj)", the brackets, letters and word ", (zzzzj), (zzzzk), (zzzzl) and (zzzzm)" shall be substituted;

(C) for section 84, the following section shall be substituted, namely:--

"84. Appeals to Commissioner of Central Excise (Appeals).--

(1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

(2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

Explanation.--For the removal of doubts, it is hereby declared that any order passed by an adjudicating officer subordinate to the Commissioner of Central Excise immediately before the commencement of clause (C) of section 113 of the Finance (No. 2) Act, 2009, shall continue to be dealt with by the Commissioner of Central Excise as if this section had not been substituted.";

(D) in section 86, in sub-sections (1) and (2), the words and figures "or section 84" shall be omitted;

(E) in section 94, in sub-section (2), after clause (hh), the following clause shall be inserted, namely:--

"(hhh) the date for determination of rate of service tax and the place of provision of taxable service;"

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

"(1F) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance (No. 2) Act, 2009, 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 (No. 2) Bill, 2009 receives the assent of the President.";

(G) Validation of action taken under sub-clause (zzzze) of clause (105) of section 65.--

Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under items (v) and (vi) of sub-clause (zzzze) of clause (105) of section 65 at any time during the period commencing on and from the 16th day of May, 2008 and ending with the day, the Finance (No. 2) Bill, 2009 receives the assent of the President, shall be deemed to be, and to have always been,

for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made by item (b) of sub-clause (3) of clause (A) of section 113 of the Finance (No. 2) Act, 2009 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,--

(a) any action taken or anything done or omitted to be done for the imposition of service tax during the said period for providing the right to use information technology software for commercial exploitation and also for providing the right to use information technology software supplied electronically, shall be deemed to be, and shall be deemed to always have been, as validly taken or done or omitted to be done as if the said amendment had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the imposition of such service tax and no enforcement shall be made by any court of any decree or order relating to such action taken or anything done or omitted to be done as if the said amendment had been in force at all material times;

(c) recovery shall be made of all such amounts of service tax, interest or penalty or fine or other charges which may not have been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, as if the said amendment had been in force at all material times.

Explanation.-- For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

(H) Validation of exemption given to a person providing specified taxable services to goods transport agency with retrospective effect.--

(1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 10(E), dated the 5th January, 2009, issued in exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), granting exemption from the whole of service tax leviable under section 66 to any person providing specified taxable services to goods transport agency, shall be deemed to have, and to always have, for all purposes, validly come into force on and from the 1st day of January, 2005, at all material times.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected as if the notification referred to in subsection (1) had been in force at all material times.

(3) Notwithstanding anything contained in the Finance Act, 1994 (32 of 1994), an application for the claim of refund of service tax shall be made within six months from the date on which the Finance (No. 2) Bill, 2009 receives the assent of the President.

Explanation.-- For the removal of doubts, it is hereby declared that the provisions of section 11B of the Central Excise Act, 1944 (1 of 1994), shall be applicable in case of refunds under this section.

(I) in section 96A, for clause (d), the following clause shall be substituted, namely:--

'(d) "Authority" means the Authority for Advance Rulings, constituted under sub-section (1), or authorised by the Central Government under subsection (2A), of section 28F of the Customs Act, 1962 (52 of 1962).'