

Service Tax Updates- July 2009

Service Tax: Budget Highlights

1. New Services in tax net

The Finance Bill 2009 (No.2) has proposed to add three services in the tax net as under

- a. Transport of coastal goods and goods through National Waterways and Inland Water
- b. Cosmetic and plastic surgery service
- c. Legal consultancy service.

2. Transportation of goods through National Waterways and Inland Water

i. This service aims at taxing any service provided or to be provided by any person to any other person in relation to transportation of -

- d. coastal goods or
- e. goods through national waterway; or
- f. goods through inland water or

ii. The coastal goods means goods transported in a vessel from one port in India to another (other than imported goods) as given under section 2(7) of the Customs Act, 1962.

3. Cosmetic and plastic surgery service

This services aims at taxing any service provided or to be provided in relation to cosmetic surgery or plastic surgery. However this service does not intend to tax surgeries undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma. Generally these processes could be undertaken to correct impairment caused by burns, fractures or congenital abnormalities like cleft lip etc. TRU circular also provides the indicative surgeries that can be taxed under this service listed as under

- a. Buttock augmentation and lift;

- b. Rhinoplasty (reshaping of nose);
- c. Otoplasty (ear surgery);
- d. Rhytidectomy (face lift);
- e. Liposuction (removal of fat from the body);
- f. Brow lift;
- g. Cheek augmentation;
- h. Facial implants;
- i. Lip augmentation;
- j. Forehead lift;
- k. Cosmetic dental surgery;
- l. Orthodontics;
- m. Aesthetic dentistry;
- n. Laser skin surfacing

4. Legal Consultancy Service

- i. This service aims at taxing any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law. For the purpose of this service business entity includes an association of persons, body of individuals, company or firm. Individual here is excluded. However whether the individual providing the service from his proprietary concern can be excluded or not is something to be examined. This service excludes any service provided by way of appearance before any court; tribunal or authority.
- ii. It is very important to highlight here the fact that Chartered Accountants/Cost Accountants/Company Secretary are exempted for any service provided in relation to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force. Therefore the services such as reply to show cause notice, collection of facts or preparation of statements for the purpose of the notice etc are also exempted along with the appearance

fee. However this service excludes only appearance fee and not other services.

- iii. The table below provides the various situations and their taxability.

Sl. No.	Service provider	Service Receiver	Taxability
1.	Individual	Entity	Non-taxable
2.	Entity	Individual	Non-taxable
3.	Individual	Individual	Non-taxable
3.	Entity	Entity	Taxable

Expansion in the scope of the existing service

5. Transportation by Indian Railways

Finance Bill 2009 (No.2) intends to tax by amending the category "transportation by rail in container service" to extend the scope of taxable service beyond transportation in a container by a person other than Indian Railways. In other words goods transportation by Indian railways in any form is now intended to be taxed.

6. Manufacture of non-excisable goods

Production or processing of goods for or on behalf of a client was covered under Business Auxiliary service. However the service/process that amounts to manufacture in terms of provision of central excise was excluded. Earlier the product like liquor which is not excisable goods (Subject to state excise) was not taxable if the process was amounting to manufacture. In this finance bill it is proposed to amend this service to exclude only excisable goods that amounts to manufacture. Therefore the non-excisable goods that are manufactured for or on behalf of the client attract service tax. This would also impact goods manufactured but which are liable to state excise duties.

7. Sub-Stock Broker Service exempted

i. Finance Bill 2009 (No.2) has proposed to amend the stock broker service to exclude the taxable service provided by a sub-broker from the tax net. This amendment is proposed in view of the SEBI regulation that only the main broker can issue the contract note, so main broker collects the commission and pays the tax on the same, then passes some share as agreed, to the sub-contractors which is now exempted from the tax net.

8. Information technology software service

ii. Information technology software service taxed “acquiring the right to use the information technology software” Now Finance Bill 2009 (No.2) proposes to amend the same to “providing right to use....” This change is proposed to be amended with effect from 16.05.2008.

Amendment to Finance Act

9. Changes in Revision of Order by Commissioner

The provisions as to revision of order by commissioner of Central Excise is provided in section 84 of the Finance Act

The highlights of the existing provision is listed as under

- a. The CCE may call for the records and make enquiry and can pass the order as he deems fit in respect of any proceedings in respect of which any authority subordinate to him has passed an order or decision.
- b. Opportunity of being heard has to be provided to assessee in case the order is prejudicial to the interest of the assessee.
- c. CCE has to communicate the order passed to the assessee, adjudicating authority and Board.
- d. CCE cannot pass order in respect of any issue where an appeal is pending before CCE (Appeals).
- e. Time limit for passing the order is within 2 years from the date of impugned order sought to be revised.

The highlights of the proposed section is as under

- a. CCE may of his own motion call for and examine the record for the purpose of satisfying himself as to the legality or propriety of any such decision or order.
- b. CCE may by order direct any officer subordinate to him, to apply to the CCE (Appeals) for the determination of such points arising out of the decision or order as may be specified by the CCE in his order.
- c. Time limit for passing the order directing the officer is within three months from the date of impugned order sought to be taken up.
- d. Application made to CCE (Appeals) shall be adjudicated as a normal appeal.

10. Appeal to Tribunal

In view of the proposed amendment to the provision of revision of orders by CCE, it is proposed that order passed by CCE under section 84 cannot be appealed to CESTAT

Comment: In the existing provision, assessee could either have filed appeal before CEE (Appeals) or revision application before CCE. Now in the proposed the relief for the order passed by the adjudication authority is only with CCE (Appeals)

11. Power to make rules

Section 94 has been amended to extend the power of Central Government to make rules with regard to the date for determination of rate of service tax and the place of provision of taxable service.

Comment: This amendment prompts that the department may shortly come up with rules pertaining to date of determination of rate of service tax and also for the place of provision of taxable service.

12. Advance Ruling

Section 96A (a) has been amended to change the meaning of the term authority to that under Section 28(F)(2A) of Customs Act 1962 which gives powers to the Government to authorise the authority constituted u/s 245-O of Income Tax Act 1961 to act as the authority here.

13. Retrospective effect for Notification

Notification 1/2009-ST dated 05.01.2009 provided exemption for the certain service provided to GTA. This notification has been given retrospective effect for clearing the pending cases and also refund for the service tax paid.

Notifications

- 14. Notification 16/2009-ST dated 07.07.2009:** Notification has been issued to specifically exempt certain associations from tax net. The taxable service under clubs and associations provided by the specified associations are not taxable with effect from 07.07.2009 till 31.03.2010. The text of the notification at www.cbec.gov.in may be referred to see the associations exempted.
- 15. Notification 17/2009-ST dated 07.07.2009:** Notification 41/2007-ST as amended provided exemption of service tax by way of a refund on certain input services that are used by the exporter for exporting the goods. This notification has now been amended by another notification which specifies in detail the documents required and the steps to be taken to avoid delays in getting refund.
- 16. Notification No.18/2009-ST dated 07.07.2009:** Exporters are now exempted from paying service tax on the goods transport agency service and business auxiliary service (Commission paid to person outside India) in relation to exported goods subject to conditions and procedure specified. In both the cases exporter himself was the person liable to pay tax in terms of Rule 2(1)(d) of the Service Tax Rules, 1994 as a receiver of taxable service and therefore we have this amendment.
- 17. Notification 19/2009-ST dated 07.07.2009:** This notification provides exemption for the taxable service provided by one scheduled bank to another scheduled bank falling under "Banking and other Financial Service" and "Forex Service".

Comment: This notification has no great impact for the reason that in the absence of this notification the banks were eligible for CENVAT credit which had no implication for either of the banks.

- 18. Notification 20/2009-ST dated 07.07.2009:**The notification provides exemption from payment of service tax by a tour operator having a contract carriage permit for inter-state or intrastate transportation of passengers, conducted tours, charter or hire service. This exemption would not extend to contract carriage for tourism purposes.
- 19. Notification No. 21/2009-ST dated 07.07.2009:**Notification No. 1/2002-ST has been amended to extend the provisions of Chapter V of the Finance Act, 1994 to installations, structures and vessels in the entire Continental Shelf of India and Exclusive Economic Zone of India. Therefore services provided to or from CSI and EEZ of India would be covered within the ambit of the provisions relating to service tax.
- 20. Notification 22/2009-ST dated 07.07.2009:** The Taxation of Service (Provided from outside India and received in India) Rules 2006 commonly known as import of service rules has been amended to extend the definition of India to include installations, structures and vessels in the entire Continental Shelf of India and Exclusive Economic Zone of India.
- 21. Notification 23/2009-ST dated 07.07.2009:** Any person providing works contract service could have opted for payment of special composition rate of 4.12% instead of the normal rates. Explanation to Rule 3 of Works Contract (Composition scheme for payment of service tax) Rules 2007 provides for the valuation for the purpose of charging service tax on such value. This explanation has been amended to include the following
- a. the value of all goods used in or in relation to the execution of the works contract, whether supplied under the said contract or under any other contract for a consideration or otherwise; and

- b. the value of all the services that are required to be provided for the execution of the works contract;
- c. the charges for obtaining machinery and tools used in the execution of the said works contract
- iii. The valuation shall exclude
 - a. the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and
 - b. the cost of machinery and tools used in the execution of the said works contract.
- iv. However valuation under this notification shall be applicable only in case of contract entered into/payments received after 07.07.2009.

Notification 16/2009-CE(NT) dated 07.07.2009: Rule 3(5B) of the CENVAT Credit Rules, 2004 has been amended to extend the requirement as to reversal of cenvat on any input, or capital goods the value of which is written off (fully in case of capital goods) before being put to use, on which CENVAT Credit had been taken earlier, to service provider as well.

- 22. Notification 16/2009-CE (NT) dated 07.07.2009:** The Rule 6 provides for reversal of the credit in case the service provider is providing both taxable and non-taxable service. One of the options in case of non-maintenance of separate records is reversal of 8% of the non-taxable turnover. This has been reduced to 6% with effect from 07.07.2009

Circular:

- 23. Circular No. 115/09/2009-ST dated 31-07-2009:** So long as the activities performed are duties within the frame work of terms of employment, the amount paid by an employer to employee, even if termed as commission, would not be treated as commission mentioned under the definition of Business auxiliary service and the service tax would not be leviable on such amount.

Important Cases

1. *Madras Hire Purchase Association & Others v. Union of India, 2009-TIOL-3338-HC-MAD-ST.*

Facts: Appellant was non banking financial company engaged in the business of hire purchase & leasing. State Government levied sales tax on hire purchase & leasing transaction. Appellant did not collect any charges for service.

Issue: Whether imposing of service tax on hire-purchase and leasing transactions by Central Government is constitutionally valid?

Decision: High Court of Madras upheld the legislative competence of Central Government to levy service tax on hire purchasing activity. It also said service tax would be chargeable only to extent of services involved in such transaction and not on the value of the transaction.

2. *Grasim Industries Ltd v. CCE { (2009) 21 STT 128 (Chennai – CESTAT)}*

Facts: Appellant was affixing standard mark (ISO mark) on cement bag for a fee & discharged service tax liability under the category 'Technical inspection & certification services'.

Issue: Whether mere marking on cement bag is covered under service tax under the category 'Technical inspection & certification services'?

Decision: Tribunal held that marking of ISO includes the activity of drawing and testing the sample and affixing the mark. Marking fees collected is part of total services and hence liable to service tax.

3. *M/s NTPC Sail Power Company Pvt Ltd Co. v. CCE, Bolapur, (2009-TIOL-1021-CESTAT-KOL)*

Facts: Revenue demanded service tax on generation of electricity on behalf of others under the category of 'Business Auxiliary Service'

Issue: Whether appellant is liable to service tax under the category of 'BAS'?

Decision: Tribunal held that it is a settled law, that electricity is a manufactured product & the definition under sec 2(f) of Central Excise Act, 1944 is an inclusive definition. Therefore generation of electricity is not covered under 'Business Auxiliary Service'

4. *United Telecom Ltd v. CST, Bangalore [(2009) 18 STT 495 (Bang – CESTAT)]*

Facts: The appellant was engaged in providing wide area network for Andhra Pradesh Government.

Issue: Whether the appellant is liable to pay Service Tax under the category of 'Online Information and Database'?

Decision: The Tribunal held that, the appellant was involved in generation or usage of data and flow of information from different centres to head quarters and vice versa could not be equated with online information & data retrieval. Supply of part of network service was covered under Telecommunication service.