



KSCAA NEWS BULLETIN

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*Upholding the Moral &
Professional Excellence*

New Executive Committee

elected for 2014-15



From the President

ಮಹಾಕವಿ ರನ್ನ ಹಾಗೂ ಮಹಾಮಾನವತಾವಾದಿ ಬಸವಣ್ಣನವರ
ನಾಡು ಬಾಗಲಕೋಟೆ ಜಿಲ್ಲೆಯ ಕೃಷಿ ಕುಟುಂಬದಲ್ಲಿ ಜನಿಸಿ,
ನಾಡಪ್ಪಭು ಕಂಪೇಗೌಡರು ಕಟ್ಟಿದ ಬೆಂಗಳೂರಿನಲ್ಲಿ ವೃತ್ತಿ ನಡೆಸುತ್ತಿರುವ
ನಿಮ್ಮ ಸಹೃದಯಿಯ ಹೊಸ ಪಾತ್ರದ ಮೊದಲ ಹೆಜ್ಜೆಗಳು.....



Dear Professional Friends,

It is my esteem pleasure and duty to thank you all for electing me as the President of our Association for the year 2014-15 . I feel honored & privileged to serve the CA fraternity in this new role. I shall put my best efforts to uphold the image & integrity of the KSCAA.

New EC team: The new EC team consists of young & enthusiastic, senior & women members who are eager to serve for the association. Lots of challenges and expectations from the new team to instill trust and bring back the prestige of the association. I am quite confident that with your support and good wishes, we will emerge as a successful team.

Theme for the Year: We have chosen the theme as **"Embodiment of Virtues"** - Upholding the moral & professional excellence. We CA's are representative of elite professional section of the society. Being a CA we have the responsibility of upholding the ethics and morality towards society at large. We intend to create positive attitude towards ethics and principles through our activities.



Upholding the Moral & Professional Excellence

41st AGM:

41st Annual General Meeting, which has been the longest and largest AGM in recent years in terms of time and number of members attended was held on 15th July 2014. Around 250 members actively participated in the meeting which saw healthy deliberations and discussions on various issues, important one being adoption of Annual Report, Annual Accounts for the year 2013-14 and elections of new committee for the year 2014-15. Except holding elections of new EC team for the year 2014-15, all other subjects were deferred considering the opinion of majority of members present. Members decided to hold the adjourned meeting on 18th October, 2014 at 11.00 AM for transacting the adjourned subjects in the agenda. As per the deliberations

of the AGM, We will review the accounts and annual report and present in the adjourned AGM for further deliberations. Further, amendment made to bye-laws of association at previous EGM held on 10th August, 2013 was rejected in the AGM in view of the procedural irregularities. Accordingly, steps have been taken to recall the application filed with registrar of society.

After a decade, elections for the EC was held, 13 members were elected out of 28 good contestants. We thank CA. Anant Mutalik & his team for smooth conduct of elections.

Union Budget:

With the new government taking the power at centre and with favourable hopes in the market, economy would create a lot of opportunities for the CA fraternity. While enjoying the benefits of economic growth, we need to support the business community and society at large and participate positively in the nation building.

Honorable Finance Minister Mr. Arun Jaitley has presented union budget for the fiscal year 2014-15. The Budget has lived up to expectations since moves are being envisaged to put the economy on progressive track. Budget proposals focus on areas which need immediate attention: infrastructure projects, manufacturing, FDI limits in defence & insurance sectors etc.

A positive note has been sent to state governments to streamline tax administration and enable introduction of GST at the earliest. Aggravations caused on account of impractical provisions in the new Companies Act, 2013 are being looked into and relief is being considered. A measured approach seems to foretell that many changes will be made outside of the annual "budgetary" exercise. Indeed speedy course correction towards the "Aachche Din" (Good Days) that the people are appealing for, can only come through this.

We, from KSCAA, are planning to conduct seminars and lectures on various topics during the subsequent months. I request every member to attend KSCAA programs and participate in association activities in large.

Before concluding my first message...

I am thankful to the past presidents, mentors and senior members for sparing time and supporting us with guidance and valuable suggestions during the period. I seek your best wishes and blessings.

We are also thankful to CA.Maddanaswamy B V, Past President of KSCAA for accepting our invitation to be part of our team as special invitee.

Thanking you,

In service of the Profession,

CA. Raveendra S. Kore
President

KSCAA

News Bulletin

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KSCAA welcomes articles & views from members for publication in the news bulletin / website.

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION

VISION

- KSCAA shall be the trusted and value based knowledge organisation providing leadership and timely influence to support the functional breadth and technical depth of every member of CA profession;
- KSCAA shall be the nucleus of activity, amity and unity among members aimed at enhancing the CA profession's social relevance, attractiveness and pre-eminence;
- KSCAA shall in the public interest, be a proactive catalyst, offering a reliable and respected source of public statement and comments to induce effective laws and good governance;
- KSCAA shall be the source of empowerment for leadership and excellence; disseminating knowledge to members, public and students; building a framework for new opportunities and partnerships that enhance life in the community and beyond; encouraging highest ethical standards and professional integrity, in realization of India global leadership vision.

MISSION

- The KSCAA serves the interests of the members of CA profession by providing new generation skills, amity, unity, networking and leadership to strengthen the professional capabilities, integrity, objectivity, social relevance, standards and pre-eminence of India's Chartered Accountants nationally and internationally through; becoming gateway of knowledge for Chartered Accountants, students and public; helping members add value to their customers/employers by enhancing their professional excellence and services; offering a reliable and respected source of public policy advice and comments to bring about more effective laws and policies and transparent administration and governance.

MOTTO: KNOWLEDGE IS STRENGTH

INVITATION FOR ARTICLES

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15% rebate if booked for minimum of 3 issues.



CHARITABLE TRUSTS - FINANCE BILL (2) 2014

CA. S. Krishnaswamy

A number of changes have been made in the law relating to Trusts. Some to overcome judicial pronouncements. A brief analysis.

1. Clause 5 & 7 of the bill that take effect from 1st April 2015 (assessment year 2015-16) are designed to rationalize the tax regime in the case of Charitable Trust and Institutions. These amendments override judicial decisions.

i. If an income is exempt under section 10 of the Income tax Act, then the Courts held that S.11 to 13 has no application. The law is now amended to state that where a registration is granted to a Trust then it cannot claim any exemption U/S 10 of the Act, except agriculture Income. As S.11 to 13 form a complete code by itself.

ii. Provision of Section 10(23c) of the Act provides for exemption to Charitable institution like hospitals and educational which have been granted approval by the prescribed authority. These institutions cannot also claim any exemption U/S 10 except agricultural Income, for similar reason as in i.

iii. Institutions registered under the scheme of Section 11 or Section 10 (23c) cannot claim depreciation in respect of such assets which have been allowed as deduction in application of the Income Tax. The double benefit is now eliminated. Courts have held that allowance of depreciation as an expenditure and cost of fixed assets as an application are different and there is no double benefit. The amendment over rides judicial decisions.

iv. Section 10 (23C) of the Act now provides total exemption to certain educational institution, universities and hospitals which are substantially financed by the Government. The term “substantially” had not been defined. The Courts held that by a percentage the term could not be defined. It is proposed to amend the Section to provide for a percentage to be prescribed- Clause 5. This amendment takes effects from 1st October 2014.

2. Cancellation of registration of a Trust- Clause-9

The existing provisions of section 12AA of the Act provide that the registration once granted to a trust or institution shall remain in force till it is cancelled

by the Commissioner. The Commissioner can cancel the registration under two circumstances:

The existing provisions of section 12AA of the Act provide that the registration once granted to a trust or institution shall remain in force till it is cancelled by the Commissioner. The Commissioner can cancel the registration under two circumstances:

- a. The activities of a trust or institution are not genuine or
- b. The activities are not being carried out in accordance with the objects of the trust or institution. Only if either or both the above conditions are met, would the commissioner be empowered to cancel the registration and not otherwise.

Therefore, the powers of commissioner to cancel registration are severely restricted. There have been cases where trusts, particularly in the year in which they have substantial income claimed to be exempt under other provisions of the Act, deliberately violate provisions of section 13 by investing in prohibited mode etc. Similarly, there have been cases where the income is not properly applied for charitable purposes or has been diverted for benefit of certain interested persons. Due to restrictive interpretation of the powers of the Commissioner under section 12AA registration of such trusts or institutions continues to be in force and these institutions continue to enjoy the beneficial regime of exemption.

Therefore, in order to rationalize the provisions relating to cancellation of registration of a trust, it is proposed to amend section 12AA of the Act to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that,-

- (i) Its incomes does not enure for the benefit of general public;
- (ii) It is for benefit of any particular religious community or caste (in case it is established after commencement of the Act);
- (iii) Any income or property of the trusts is applied for benefit of specified persons like author of trust, trustees etc; or

(iv) Its funds are invested in prohibited modes, then the Principal Commissioner or the Commissioner may cancel the registration if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the above manner.

3. Anonymous donation- 115BBC- Clause 36

Anonymous donations are taxed at the maximum marginal rate of 30% exceeding 5% of total donation or one lakh rupees whichever is higher.

The remaining tax is chargeable on total income after reducing the full amount of anonymous donations. The proper way of computation is to reduce the income by the amount which has been taxed at the rate of 30 percent. It is proposed to amend section 115BBC to provide that the income-tax payable shall be the aggregate of the amount of income-tax calculated at the rate of thirty per cent on the aggregate anonymous donations received in excess of 5% of the total donations received by the assessee or one lakh rupees whichever is higher, and the amount of income-tax with which the assessee would have been chargeable had his income been reduced by the aggregate of the anonymous donations which is in excess of the 5% of the total donation received by the assessee or one lakh rupees, as the case may be. This comes into effect of 1st April, 2015 and will accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

4. Belated application for registration earlier years. A beneficial amendment will also get benefit; no reopening. The amendments will take effect from 1st October 2014.

The existing provisions of section 12A of the Act provide that a trust or an institution can claim exemption under sections 11 and 12 only after registration under section 12AA has been granted. In case of trusts or institutions which apply for registration after 1st June, 2007, the registration shall be effective only prospectively.

Non-application of registration for the period prior to the year of registration causes genuine hardship to charitable organizations. Due to absence of registration, tax liability gets attached even though they may otherwise be eligible for exemption and fulfil other substantive conditions. The power of condonation of delay in seeking registration is not available under the section.

In order to provide relief to such trusts and remove hardship in genuine cases, it is proposed to amend section 12 A of the Act to provide that in case where

a trust or institution has been granted registration under section 12AA of the Act, the benefit of sections 11 and 12 shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.

Further, it is proposed that no action for reopening of an assessment under section 147 shall be taken by the Assessing Officer in the case of such trust or institution for any assessment year preceding the first assessment year for which the registration applies, merely for the reason that such trust or institution has not obtained the registration under section 12AA for the said assessment year.

However, the above benefits would not be available in case of any trust or institution which at any time had applied for registration and the same was refused under section 12AA or a registration once granted was cancelled.

Comments

The amendment relating to cancellation of registration will not affect cases where proviso to S.2 (15) may apply in one year.

In *Vanita Samaj v DIT (Exemption)* [2014] 63 SOT 267/45 taxmann .com 303 (Mumbai –Trib) **Charitable or religious trust –Procedure for registration (Cancellation of registration).**

It is not disputed that the trust has come into existence in year 1953 and it was granted registration under section 12A and there is no change in the nature of activities of the trust since then. It is not the case of the DIT (Exemption) that the activities of the trust are not genuine; in fact the DIT (Exemption) assumed that by virtue of the first proviso to section 2(15) the activity of the trust should be treated as not genuine overlooking the fact that there is no change in the activity so as to invoke provisions of sub-section (3) of section 12AA. [para 6]

On a conjoint reading of the first proviso with second proviso to section 2(15), a trust can be denied exemption in the year where the gross receipts exceed the limit prescribed in the second proviso to section 2(15) and in all other years income from such activities should be considered for the benefits under section 2(15) if it is within the limit provided therein.

(Contd. on page 8)



CENTRAL EXCISE

- PROPOSED CHANGES IN THE CENTRAL EXCISE ACT, 1944

(to be effective from enactment of the Finance Bill, 2014 except as indicated otherwise)

CA. C.R. Raghavendra, B.Com, FCA, LLB, Advocate

1. Proposal to create new post as principal chief commissioner of principal commissioner – (Clause 88 & 89):

It is proposed to amend Section 2(b) of Central Excise Act, 1944, so as to provide for inclusion of Principal Chief Commissioner of Central Excise and Principal Commissioner of Central Excise in the definition of the Central Excise Officer.

Further, proposal to amend under Central Excise Act, 1944 or Finance Act, 1994, so that reference to a Chief Commissioner of Central Excise or a Commissioner of Central Excise may also include a reference to the Principal Chief Commissioner of Central Excise or the Principal Commissioner of Central Excise, as the case may be.

2. Introduction of new sections 15A and 15B to empower Central Government to collect information from various authorities or agencies [Clause 90]

Section 15A is being inserted so as to empower the Central Government to prescribe an authority or agency to whom the information return shall be filed by the specified persons. The section provides that the persons specified under the section shall have to provide information return. The persons specified includes income tax authorities, banks, registration offices, state VAT authorities, Registrar of companies, stock exchanges, etc. This empowers the Government to collect information to identify tax evaders or recover confirmed dues.

The time periods, format and manner of providing information return shall be prescribed. The Central Excise authority considers that the information provided by the agency (prescribed above) is defective, then the agency shall be given time limit of 30 days from date of intimation or such extended period, to rectify the information. If the agency does not rectify within such period, it will be treated as non provision of information.

If no information return is filed within the prescribed period or no rectification is made to defective return

within the prescribed period, then the authority may issue notice to such agency to submit the return with in a period of 90 days from date of notice.

It is also proposed to impose penalty (section 15B) for failure to furnish information return.

3. Amendment to Section 31 which deals Settlement Commission [Clause 91 to 94]

a) Proposal to amend Section 31(g) and section 32(1) to change the name of the “Customs and Central Excise Settlement Commission” to the “Customs, Central Excise and Service Tax Settlement Commission”. This is to recognise inclusion of service tax settlement already introduced in 2012.

b) Proposal to amend Section 32E(1):

i. to replace the reference to section 11AB with a reference to section 11AA to align the same with the existing central excise provisions relating to recovery of interest on delayed payment.

ii. allow filing of applications of settlement before the Settlement Commission in cases where the applicant has not filed the returns. The Settlement commission may after recording reasons, allow the applicant to apply.

iii. to omit sub-section (2) which relates to non filing of application for settlement application within 180 days of seizure of books or other documents. It should be noted that settlement can be done only when show cause notice is issued. When issued before 180 days of seizure, it would now be possible to go for settlement immediately.

c) Proposal to amend Section 32O(1) to provide clarity that where the concealment of particulars of duty liability is made before the officer of central excise then there would be bar on subsequent application to Settlement Commission, if the earlier order of the Settlement Commission imposes a penalty on the person for such concealment.

4. Amendment to Section 35B which deals with Appeal to Tribunal [Clause 95]

i) Presently the Tribunal has been given the discretion

to refuse to admit the appeal where duty implications or the penalty amounts does not exceed Rs.50,000/-. Such monetary limit has been proposed to increase to Rs. 2,00,000/-. It shall be noted that where the matters relate to any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment, the matter would be heard irrespective of monetary limits.

ii) For the purpose of filing appeal by the department, presently the committee of commissioners shall have to take a decision as to whether to file appeal or not. The above referred committee has to be constituted by way of issue of notification in official gazette. The proposal for constitution of committee could be made by way of order instead of notification.

5. Amendment to Section 35C(2A) which deals with expiry of stay orders of tribunal after 365 days [Clause 96 & 97]

Proposal is to omit three provisos to Section 35C(2A), which provides that the stay orders passed by the Tribunal would expire if the appeals are not disposed off within 180 days or 365 days of stay order.

This should be read in the light of proposal to withdraw stay procedures before appellate authority (Refer to the amendment of Section 35F). Further, even for those appeals which are pending before Tribunal where stay is granted, assesses would be relieved from recovery threats by the department because of the above referred provisos being deleted without any saving clause.

6. Amendment to Section 35E which deals with revision of committee of commissioners [Clause 97]

Clause 97 specifically grants the Board power to extend the time by 30 days if the Committee of Chief Commissioners does not take the decision within 3 months of receipt of adjudication order.

7. Amendment to Section 35F which deals with pre-deposit and stay applications. [Clause 98]

Presently Section 35F provides that where an appeal is to be preferred before Commissioner (appeals) or before Tribunal, duty, interest or penalty shall be deposited prior to filing appeal. However, the Commissioner (appeals) or CESTAT may waive deposit of such adjudicated levies.

The proposal to bring in new set of provisions to prescribe a mandatory fixed pre-deposit as below:

The Tribunal or Commissioner(appeal) shall not entertain the appeal unless the following amounts are paid.

A. Appeal before Commissioner Appeals: 7.5% of the duty demanded or penalty imposed or both in the order appealed against

B. Appeal before Tribunal:

(a) **Appeal against order of the Commissioner:** 7.5% of the duty demanded or penalty imposed or both in the order appealed against

(b) **Appeal against order of the Commissioner (appeals):** 10% of the duty demanded or penalty imposed or both in the order appealed against.

C. Maximum amount of pre-deposit to be made shall be Rs. 10 crores.

D. The above pre-deposit requirements would apply only to those appeals which are filed after this provision is notified and not to the stay / appeals pending as on that date.

E. Duty demanded has been defined as below:

Explanation.— For the purposes of this section “duty demanded” shall include,—

(i) amount determined under section 11D;

(ii) amount of erroneous Cenvat credit taken;

(iii) amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004.

This read with amendment of section 35C(2A) is a welcome proposal as this would speed up the disposal of pending matters at CESTAT and Commissioner (appeals).

However, where the lower authorities {including Commissioner(appeals)} confirm the demands without even looking at the favourable decisions of the higher forums (which the authorities normally do), the assesses would certainly be put to hardship.

8. Amendment to Section 35L dealing with appeal to Supreme Court [Clause 99]

This clause is introduced to clarify that clarify that determination of disputes relating to taxability or excisability of goods is covered under the term “determination of any question having a relation to rate of duty” and hence, appeal against Tribunal orders in such matters would lie before the Supreme Court. This proposal is necessitated in the background of the fact that many High Courts have taken a view that taxability or excisability relates to determination of rate of duty and hence appeal shall be preferred before, Supreme Court and not before High Courts.

9. Amendment to Section 35R dealing non filing of appeal by the Department in certain cases. [Clause 100]

Section 35R provides that based on the monetary limits, the board shall decide not to file appeals before appellate authorities or tribunal or courts. Reference under section 35R(4) did not include Commissioner(Appeals). Proposal is to include Commissioner(Appeals) under the said sub-section.

10. Amendment to Third Schedule to Central Excise Act, 194 - [clause 104]

Amendments proposed to Third schedule to align the same with MRP notification. This amendment would be effective from 10.07.2014.

A. Non Tariff Notifications

1. Notification 17/2014-CE (NT) dated 11.7.2014 introduces parts of filtering equipment into the MRP regime.
2. Notification 18/2014-CE (NT) dated 11.7.2014 extends the benefit of advance ruling to resident private limited companies. It should be noted that the benefit of advance ruling is already available to resident public limited company and public sector companies.

B. Amendments to Central Excise Rules, 2002 [Notification No. 19/2014-Central Excise (N.T.) dt. 11.07.2014]

1. **Rule 8(1) manner of payment of duty: (effective from 1.10.2014)**
 - a. All assesses would be required to remit duty through online mode through internet banking only and the earlier limit of Rs.1 lakh stands withdrawn.
 - b. Assistant Commissioner or the Deputy Commissioner

of Central Excise, for reasons to be recorded in writing, may allow an assessee for payment of duty by any mode other than internet banking

2. Rule 8(3A) consequence of default in payment of duty (effective from 11.7.2014):

The rule has been substituted. The new rule provides that in case of default in payment of duty beyond 1 month, then the assessee is liable to pay the penalty at the rate of 1% of such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues.

C. Amendments in the Central Excise Valuation Rules, 2004[Notification No. No 20/2014 dt./ 11.07.2014] - effective from 11.07.2014

Rule 6 of The Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is being amended so as to provide that in cases where excisable goods are sold at a price below the manufacturing cost and profit and there is no additional consideration flowing from the buyer to the assessee directly or from a third person on behalf of the buyer, value for the assessment of duty shall be deemed to be the transaction value.

This welcome amendment is to overcome the decision of the Supreme Court in the case of Fiat 2012 (283) E.L.T. 161 (S.C.)

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CHARITABLE TRUSTS - FINANCE BILL (2) 2014

(Contd. from page 5)

If it was to be interpreted that once the income of the trust in one year crosses the limit provided in the second proviso, the registration originally granted has to be cancelled, it makes the second proviso redundant for the years where the receipts are less than the specified limit; this could not be the intention of the Legislature. In fact, the Act does not provide for claiming of exemption on year to year basis. [para 7]

On a conspectus of the matter, it is, therefore, held that denial/cancellation of registration in the instant case is not in accordance with law. To clarify further the gross receipts having exceeded the stipulated monetary limit provided in the second proviso to section 2(15), the assessee was not entitled to claim exemption in relevant year but that fact alone could

not make the trust non-genuine for the purpose of invoking section 12 AA(3). Therefore, the order passed by the DIT (Exemption) is set aside and the appeal filed by the assessee is allowed. [para 8]

Tail Piece

NGOs get R.11800-cr-foreign funds

The Government on Wednesday said a total of Rs.11,838 crore was received by various organizations, including some in the NGO sector, from 164 countries in 2012-13. Minister of State for Home Affairs Kiren Riju provided the data in a written reply to the Rajya Sabha on Wednesday. "The Ministry of Home Affairs deals with the NGOs getting contributions from foreign sources. As on date, 42,529 organizations are registered under the Foreign Contributions (regulation) Act, 2010", he said.

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TAX ON LUXURIES UNDER THE KARNATAKA TAX ON LUXURIES ACT 1979



CA. G.B. Srikanth Acharaya and CA. Annapurna Kabra

Entry 62 of State list includes taxes on luxuries including taxes on entertainments, amusements, betting and gambling. The word luxuries in Entry 62 of List II means the activity of enjoyment of or indulgence in that which is costly or which is generally recognized as being beyond the necessary requirements of an average member of society and not articles of luxury.

I) Luxury Tax on Hotels

Charges for lodging: It includes charges for air-conditioning, telephone, telephone calls, television, radio, music, extra beds and the like but do not include any charges for food, drink, laundry or other amenities (Section 2(1))

Hotel: means a building or part of a building where lodging accommodation, with or without board is by way of business provided for a monetary consideration, and includes a lodging house, club and holiday resorts. (Section 2(4)). A club, a lodging house and a holiday resort for which charges are collected for providing accommodation whether or not in the course of business shall be deemed to be a hotel for the purpose of this Act.

Luxuries: means services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life (Section 2(4-B))

- “luxury provided in a hotel’ means,-
 - (i) accommodation for lodging provided in a hotel, the rate of charges for which (including charges for air-conditioning, telephone, television, radio, music, extra beds and other amenities for which charges are compulsorily payable, but excluding charges for food and drinks) is not less than one hundred and fifty rupees per room per day;
 - (ii) provision in hotels, whether to residents or others of such facility as health club, beauty parlour, swimming pools, conference hall and the like for which charges are separately made (Section 2(5))

Section 3: Levy and collection of tax on luxury provided in a hotel

Luxury tax shall be levied and collected a tax on the luxury provided in a hotel in respect of every room at the following rates namely:-

a	Where the charges for lodging per room per day are not less than seven hundred and fifty only but not more than one thousand rupees	Four percent of such charges
b	Where the charges for lodging per room per day are more than one thousand rupees but not more than two thousand rupees	Eight percent of such charges
c	Where the charges for lodging per room per day are more than two thousand rupees	Twelve percent of such charges

II) Luxury tax on Health Club (Section 3B):

There shall be levied and collected a tax at the rate of ten per cent on the charges collected for luxuries provided in a hotel for residents or others such as health club, beauty parlour, swimming pool, conference hall and the like when such charges are collected separately

III) Levy & Collection of Tax on Club (Section 3-D)

There shall be levied and collected a tax on luxuries provided in a club to the members who are required to pay any amount as fee, deposit, donation or any other such charges by whatever name called, at the rate as specified in column (3) of the table below.

Sl. No	Location of the club	Rate of tax
1	Corporation area	Six hundred rupees per member per annum
2	Other areas	Three hundred rupees per member per annum

IV) Luxury tax on Hospitals

Charges for luxuries provided in a hospital: means charges for accommodation provided in a hospital for any patient or inmate or resident, by whatever name called and his attendant including charges for air-conditioning, telephone, telephone calls, television, radio, music, extra beds and the like but does not include any charges for food, drink, laundry or other amenities, medicines, medical

including consultation, testing, diagnostic and nursing services, therapeutic services or other similar services (Section 2 (1-c)

There shall be levied and collected a tax at the rate of **eight per cent on the charges** collected for luxuries provided in a hospital in a room such as accommodation, air conditioning, telephone, telephone calls, television, radio, music, extra beds and the like, where such charges are more than one thousand rupees per day per room. (Sec 3- E)

Notification/Circular reference: KTL-CR-06 / 2007-2008 dated 28-9.2007: The charges should be per patient per room

V) Luxury Tax on Marriage Hall

Marriage Hall” means,-

Kalyana Mantap, Shadi Mahal, Community Hall, a building or part of a building or a temporary structure or a property as defined in section 3 of the Transfer of Property Act, 1882 where accommodation is provided for marriage or reception or matters related therewith or for organizing any official, social or business function whether functions are conducted in such place regularly or not;

Seminar, convention, banquets, meeting or exhibition hall or a temporary structure or a property as defined in section 3 of the Transfer of Property Act, 1882 where accommodation is provided for marriage or reception or matters related therewith or for organizing any official, social or business function whether functions are conducted in such place regularly or not;

Any other place or temporary structure as may be specified by the Commissioner, where accommodation is provided for marriage or reception or matters related therewith or for organizing any official, social or business function whether functions are conducted in such place regularly or not. (Section 2-5B)

Prior to 01.4.2012 the temporary structure is not included in definition of marriage hall (WP 51729-12 dated 16.3.2013)

Serial No 20 of the Notification No FD 63 CSL 2009(VIII) Bangalore dated 30.3.2009 which exempted the tax payable under the Said Act by the proprietors of marriage halls when industrial exhibitions are held in the said halls with effect from the first day of April 2009. This notification is withdrawn with effect from 01.4.2012.

[(1A) “Charges for marriage hall” include charges for air conditioning, chairs, utensils and vessels, shamiana, electricity, water, fuel, interior or exterior decoration [or any amount received by way of donation or charity or by

whatever name called in relation to letting out the marriage hall] but do not include any charges for food and drinks;

Explanation.- If any question arises whether any charges are charges for marriage hall, such question shall be referred to [the Commissioner] and decision of [the Commissioner] shall be final and shall not be called in question in any Court]

Declaration of charges on Marriage hall Sec 4 AA

1. Every proprietor of a marriage hall liable to pay tax under this Act, shall declare the normal rate fixed for luxury provided by him in such manner and within such period as may be prescribed.
2. Where luxury provided in a marriage hall to any person is not charged at all, or is charged at a concessional rate, then the tax on such luxury, shall be levied and collected as if full charges for such luxury were paid to the proprietor of the marriage hall.

VI) Registration

The application for registration to be made in Form I

3. Registration certificate shall be granted in Form I-A
4. Registration certificate shall not be transferable.
5. In case the proprietor has more than one place of business the registration certificate shall cover all such places of business and copies of registration certificated would be issued.
6. It has to be displayed at the conspicuous place of business.

VII) Return & Payment of Tax

- Every proprietor liable to pay tax under this Act shall furnish yearly return to the assessing authority within sixty days of the expiry of the year. (Sec 5)
- Every proprietor liable to pay tax under this act shall furnish monthly return to the assessing authority within twenty days of the expiry of a month. (Sec 5-A)
- For Hotel or marriage hall or a hospital the monthly return should be in Form II-AP, For Club- the monthly return should be in Form II-AC and for the Stockist the monthly return should be in Form II-AS
- The payment of taxes has to be made at the time of filing the monthly returns. At the time of filing the annual returns any amount of tax unpaid has to be paid in full.

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SERVICE TAX BUDGET 2014

CA. Madhukar N. Hiregange and CA. Roopa Nayak



In backdrop massive mandate based on election promises of tax reforms, focus on governance and reining in corruption, the Budget of Hope was presented. As usual it has focused on empowering of the tax administrators and restricting cenvat credit. There have been changes introduced in the fine print of the proposals which need to be represented before the bill becomes an Act. The paper writer has examined the major changes under service tax and implications thereof.

Background

The changes proposed by the Budget are ostensibly done with intent to revive economy, increase investment in manufacture, set right inverted duty structure, and reduce litigation. It appears that while an attempt has been made to garner revenue, there have been measures which could lead to increase in the corruption instead of helping the already beleaguered honest tax payer. Transaction costs for the tax compliant are bound to go up.

There have been few changes in negative list, mega exemption. The hard hitting change has been done in cenvat credit provision discussed later. The proposals are discussed along with the dates from when it is applicable. The proposals could be (i) changes which come into effect immediately; and (ii) changes applicable based on periodicity of returns or (iii) from date when the Bill gets the presidential assent.

Changes in Service Tax:

Negative List:

a. Sale of space or time for advertisements extended to cover all sale of space or time for advertising other than broadcasting or print media:

- Impacts on internet websites, on film screen in theatres, bill boards, buildings, etc.

In this case the cenvat chain is continued and therefore for those tax payers who are manufacturing excisable goods or providing taxable services, the impact would be minimal.

b. Service tax on services by radio taxis or radio cabs:

Direct impact on cabs whether AC or non-AC.

*Note: The above changes are effective from date when Finance bill receives presidential assent.

Changes in mega exemption:

a. Air-conditioned contract carriages taxed*:

- Impact is any service provided for transport of passenger by air-conditioned contract carriage

including point to point travel, leviable to service tax, with immediate effect. Service tax on abated value of 40% effectively tax rate of 4.944%. Surprisingly, credit cannot be availed under abatement option.

b. Removal of Exemption to services by way of technical testing or analysis of new developed drugs, on human participants*:

Earlier exemption to testing on human subjects in clinical trials by a clinical research organization (CRO) approved to conduct clinical trials by the Drug Controller General of India. Now made taxable.

c. Changes in exemption to Education*:

- The exemption which was earlier given to auxiliary education services is omitted.

- In future, the following services received by education institutions are exempted from service tax:

- (i) transportation of students, faculty and staff of the eligible educational institution;
- (ii) catering service including any mid-day meals scheme sponsored by the Government;
- (iii) security or cleaning or house-keeping services in such educational institution;
- (iv) services relating to admission to such institution or conduct of examination.

- The exemption extended to cover services to students/staff by education institution providing education covered in negative list.

- The exemption hitherto available to services provided by way of renting of immovable property to educational institutions has been removed.

d. Services ordinarily provided by a Municipality*:

- The exemption in respect of services provided to Government or local authority or governmental authority which earlier covered services in relation to water supply etc is made more limited in scope by omitting "in relation to".

- This exemption would be available only to Services of water supply, public health, sanitation conservancy,

solid waste management or slum improvement and up-gradation which will continue to remain exempted.

- Services **provided by vendors in relation to** water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation to Government or municipality could be liable to service tax and could lead to more litigation.

e. Services by a Hotel, Inn or Guest House*:

- According to the present entry at Sl. No. 18, “service by way of renting done by commercial places meant for residential or lodging purposes, having a declared tariff of a unit of accommodation below Rs 1000 per day or equivalent” was exempted from service tax.
- To remove any ambiguity, the word **commercial** is being omitted which means that “home stays” could also now be covered.
- Due to omission, it is clarified the Rs. 1000/ per day criterion would be applicable to any entity providing service by way of accommodation, including ashrams.

Other major changes in mega exemption notification*:

- **Transport of organic manure*** by vessel, rail or road (by GTA) similar to fertilizer which is already exempted.
- **Services by way of loading, unloading, packing, storage or warehousing, transport*** by vessel, rail or road (GTA), **of cotton**, ginned or baled, is exempted.
- **Services by Common Bio-medical Waste Treatment Facility operators*** by way of treatment, disposal of bio medical waste or processes incidental to such treatment or disposal are being exempted.
- **Services by the Indian tour operators to foreign tourists*** in relation to tours wholly conducted outside India are being exempted. Anyway this would have been not liable as services provided to recipient located outside India.

The exemptions other than for which presidential assent required above to are applicable immediately. [those that are immediately applicable have been marked *]

Service tax valuation:

Service tax on service portion in Works Contracts:

- In Rule 2A of the Service Tax (Determination of Value) Rules, 2006, service tax payable on works contracts for finishing services of immovable property and repairs/maintenance of goods on 70% of total amount charged.
- It has not addressed whether service providers executing works contract for the finishing such as flooring, painting of newly constructed buildings can pay service tax on 40% or on 70% of total amounts

charged. Paper writer’s view is that it would be 40%.

- Please refer Notification No.11/2014-ST.
- This is wef 1.10.2014.

Changes in Service Tax Rules: [with immediate effect]:

Reverse charge:

- a. **Service provided by a Director to a body corporate*:** Earlier restricted to services provided to company alone. This could directors of body corporate [covers LLP]. If a body corporate is a director represented by a designated person, that would also be covered under the reverse charge.
- b. **Services provided by Recovery Agents to Banks*,** Financial Institutions and NBFC are being brought under the reverse charge mechanism; Banks would now need to bear 100% service tax and tax cannot be recovered from agent.

Refer Notifications 9 and 10/2014-ST.

Changes in Place of Provision of Services Rules: [applicable weffrom 1st October, 2014].

Amend place of provision of repair service carried out on temporarily imported goods.

- The second proviso to rule 4(a) is being amended to prescribe that it would suffice for the purpose of exclusion of repair service from applicability of rule 4(a) that the goods imported for repair are exported after repair without being put to any use other than that which is required for such repair.

Intermediary services definition amended:

- The definition of intermediary is being amended to include the intermediary of goods in its scope. The destination principle of the tax is being eroded.
- This would impact the services by Commission agents for goods of foreign principals.

Refer Notification 14/2014-ST for full details.

Point of Taxation Rules:

The point of taxation for reverse charge will be:

- the payment date or
- the first day that occurs immediately after a period of 3 months from the date of invoice
- whichever is earlier.
- There are transitional provisions made in Rule 10 of these rules.
- Refer Notification No.13/2014-ST

This amendment only applies to invoices issued after 1st October, 2014.

Changes in abatement notification 26/2012-ST [Notification No. 8/2014- ST]

- **Abatement benefit to service receiver even if credits are availed by GTA*:** This is a major relief effective immediately.

- Service of transportation of passenger by air-conditioned contract carriages is taxable with immediate effect. An entry has been inserted by which ST to be paid on 40%. The CENVAT credit of inputs or capital goods or input services cannot be availed.

The credit of input service of renting of a motor cab would be allowed to be availed if such services are received from a person engaged in the similar line of business i.e. a sub-contractor providing services of renting of motor cab to the main contractor.

- The CENVAT credit eligibility would be restricted to 40% of the credit of the input service of renting of any motor cab even if no abatement is availed. This is w.e.f 1.10.2014.
- **Tour operator service:** Service providers are also being allowed to avail CENVAT credit on the input service of another tour operator, used for providing the taxable service. Change to be effective from 1st October, 2014.

Joint Charge mechanism:

- In renting of motor vehicle, where the service provider does not take abatement service tax payable by the service provider and service receiver is modified as 50% each.
- This change w.e.f 1st of October 2014.

Refer Notification No.10/2014- ST.

Major changes in CENVAT Credit Rules:

Time limit for availing credits

- A manufacturer or a service provider shall take credit on inputs and input services within a period of six months from the date of issue of invoice, bill or challan w.e.f. 1st September, 2014.
- It is not clarified whether this is a retrospective amendment or past missed out eligible credits can be availed even post 1.9.2014, without time limit.
- Many manufacturers and service providers avail credit once a year and many have not made a deeper examination of whether all eligible capital goods, inputs or input service credits have been availed. There are service providers availing an abatement who are eligible but have not availed the credit as under:

A. Supply of Food (hotel, convention, club, pandal, caterers) – Some inputs + , all capital goods & all input services.

B. Construction – Capital Goods and Input Services

Note: This is a professional opportunity which needs that missed credits are to be listed and communicated by way

of speed post before end of August 2014. Big value add to the tax payers.

Credits availment of ST paid under reverse charge*:

- In case of service tax paid under full reverse charge, the condition of payment of invoice value to the service provider for availing credit of input services would not be there. If tax is paid then credit is available.
- For partial reverse charge it is mentioned both invoice value+ ST would need to be paid to avail credits. [Refer amended proviso to rule 4(7)].

Other major changes in CCR:

- Rule 12A is being amended so as to disallow transfer of credit by a large taxpayer from one unit to another*.

Refer Notification No.21/2014-CE (N.T.) for full text of changes in cenvat credits provisions

Input Service Distributor:

- Rule 7 of the CENVAT Credit Rules, 2004, provides for the manner of distribution of common input service credit by the Input Service Distributor. Rule 7(d) was amended to provide for distribution of common input service credit among all units in their turnover ratio of the relevant period.
- It is clarified now that distribution of input service credit to all units (which are operational in the current year) in the ratio of their turnover of the previous year/previous quarter as the case may be. No need to prove that the services are used for respective unit.

Other Major changes – Tax Terrorism Continues

- To prescribe a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing of appeal before the Commissioner (Appeal) or the Tribunal at the first stage, and
- 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal.
- The amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crore.
- This new provision would apply to Service Tax.

Interest rate changes:

Interest rates per annum payable on delayed payments under section 75, are prescribed as follows:

Extent of delay

- Up to six months 18%
- More than six months & upto one year 18% for first six months, and 24% for the period of delay beyond six months
- More than one year 18% for first six months, 24% for second six months, and 30% for the period of delay beyond one year

- This is applicable from 1st October 2014.
- 3% concession on the applicable rate of interest will continue to be available to the small service providers with turnover upto Rs 60 Lakhs pa.

Comments: This is a gargantuan measure which could kill business. The representation could be made at earliest to drop it.

Refer notification 12/2014-ST.

E-payment:

- E-payment of service tax mandatory from the 1st Oct 2014.
- Relaxation permitted with discretion by the Deputy Commissioner/Asst. Commissioner on case to case basis.
- Refer Notification 09/2014-ST.

Advance Ruling: Silver Lining - The resident private limited company is being included as a class of persons eligible to make an application for Advance Ruling in service tax [Notification No.15/2014-ST]*.

Other Amendments:

Section 80 is being amended to exclude the reference of first proviso to section 78. This amendment, in effect,

removes the power to waive the 50% penalty imposable in cases where service tax has not been levied, not paid or short levied or short paid on account of suppression of facts or willful misstatement but details of transactions are available in the specified record.

SEZ – procedural simplification: [changes to have immediate effect]*

Conclusion:

It remains to be seen whether some of the harsh measures such as mandatory deposit before appeal, high rate of interest of 24-30% is rolled back. It may do good to ensure that while increasing the growth rate, it does not lead to thriving of the parallel economy and the consequent wide spread evasion.

In this article the paper writer has sought to cover the changes and impacts in the Budget 2014.

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41st Annual General Meeting held on 15-7-2014



Members marking their attendance



Executive Committee 2013-14



CA. Ningoji Rao addressing members



Past Presidents of KSCAA

AGM Proceedings



41st Annual General Meeting held on 15-7-2014

Election Proceedings



Elected Executive Committee for 2014-15



Handover of Charge to Incoming President



Elected President addressing the members



Committee Members of Bangalore Branch of SIRC congratulating the New EC Team



Office Bearers 2014-15

Office Bearers & Other Executive Committee Members - 2014-15



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