

# Finance Bill-2013-Analysis of Service Tax by CA Atul Kumar Gupta

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## A. Changes applicable from the date of enactment of Finance Bill, 2013

### I. Expansion in the Scope of Negative List:-

1. The agriculture sector has been supported by keeping the bulk of services relating to agriculture or agriculture produce in the Negative list vide Finance Act 2012.

Section 66D(d) of the Finance Act, 1994 provides that “the services relating to agriculture shall include *inter-alia* by way of—

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or *seed testing*;

The definition of agriculture and agricultural produce has been provided in Section 65B, which can be stated as under:

“Agriculture” means the cultivation of plants and rearing of all time forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.

“Agricultural produce” means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

As a result of this, agricultural operations which are directly related to the agriculture or agricultural produce has been kept out of the purview of service tax.

However, there were some services like laboratory testing services, testing of plants or animals, soil testing, animal feed testing etc. in relation to agriculture or agriculture produce which are essential to determine the quality of agriculture or agricultural produce but was liable to service tax as only testing service in relation to seed was kept outside the purview of service tax.

To remove this disparity, the Financial bill for 2013-14 has extended the scope of “Testing Services” by omitting the expression “seed” from the word “seed testing” in Section 66D (d)(i).

As a result of this, various type of “Testing Services” like laboratory testing services, testing of plants or animals, soil testing, animal feed testing etc. to determine the quality of produce and directly related to production of agriculture or agricultural produce has now been made non taxable under service tax.

2. The scope of Negative List is being changed by the Budget, 2013 by including courses in designated trades as notified under the Apprentices Act, 1961 offered by industrial training

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institute (ITI) or an industrial training centre (ITC) affiliated to the **State Council of Vocational Training** under the definition of 'approved vocational education course'.

However, courses run by an institute affiliated to the National Skill Development Corporation are being excluded from the scope of the definition because National Skill Development Corporation is not an affiliating body.

## Meaning of 'Industrial training institutes & Industrial Training Centers'

**Industrial Training Institutes** & "Industrial Training Centers" are training institutes which provide training in technical field and constituted under Directorate General of Employment & Training (DGET), Ministry of Labour & Employment, Union Government of India.

Industrial Training Institutes (ITIs) are government-run training organizations whereas Industrial Training Centres (ITCs) are privately-run equivalents. Both are engaged in providing post-school technical training.

## II. Changes made in Section 73

In section 73, a new sub-section (2A), similar to sub-section (9) of section 11A of Central Excise Act, 1944, is being inserted to harmonize the Central Excise and Service Tax law. As a result, if the grounds for invoking extended period are not found sustainable by an appellate authority i.e. Commissioner (Appeals) or tribunal or court, the same will be deemed to be a notice issued for a period of eighteen months by exercising the power of CEO to issue notice under Sub-Section (1) of Section 73 within 18 months from relevant date i.e. the Central Excise officer will be able to determine the demand for the shorter period of eighteen months.

## III. Changes in provisions related to penalty

### 1. Penalty for non-registration:

Section 77(1) (a) is being modified so that Penalty for non-registration will be restricted to Rs. 10,000. Currently quantum of penalty may extend to higher of:-

- i. Rs. 10,000,
- ii. Rs. 200 per day of failure

### 2. Personal Penalty:

Section-78A is being introduced to **impose the penalty on director, manager, secretary or other officer** of the company, who is **knowingly involved** in specified contraventions.

Where '**A Company**' has committed any of the following contraventions, namely:

- (a) **evasion** of service tax; or

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- (b) **issuance of invoice, bill or as the case may be, a Challan without provision of taxable service** in violation of the rules made under the provision of this chapter; or
- (c) **availment and utilization of credit of taxes or duty without actual receipt of taxable service** or excisable goods either fully or partially in violation of the rules made under the provisions of this chapter; or
- (d) **failure to pay any amount collected as service tax** to the credit of the Central Government **beyond a period of six months** from the date on which such payment becomes due,

then any director, manager, secretary or other office of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be **liable to a penalty** which may extend to **one lakh rupees**".

#### IV. Changes in provisions related to offences

- a) Section 83 of the Finance Act, 1994 is being amended to substitute the Section 9A with Section 9A(2) of Central Excise Act, 1944 and made applicable to the provisions of Finance Act, 1994 *mutatis-mutandis*.

Sub-Section (2) of Section 9A which deals with the certain offences deemed to be non-cognizable read as under:

*"Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed."*

- b) Revised Punishments for offences vide Section 89

<b>First Time Offence</b>		
Nature of Offences	Old Provisions	New Provisions
Evasion of Service Tax Payment Knowingly	Where amount involved is more than 50 lakhs – period of Imprisonment from 6months to 3 years	Where amount involved is more than 50 lakhs – period of Imprisonment from 6months to 3 years
Maintaining False Books of Accounts or fail to supply any information required under the Chapter or the rules made there under		
Availment and Utilization of CENVAT of taxes or duty either fully or partially in violation of rules		
Collection of Service Tax but Non-deposition beyond a period of six		Where amount involved is more than 50 lakhs – period

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months		of Imprisonment from 6months to 7 years
<b><u>Subsequent Offence</u></b>		
<b>Nature of Offences</b>	<b>Old Provisions</b>	<b>New Provisions</b>
Evasion of Service Tax Payment Knowingly	Period of Imprisonment from 6months to 3 years	Where amount involved is more than 50 lakhs – period of Imprisonment Upto 3 years
Maintaining False Books of Accounts or fail to supply any information required under the Chapter or the rules made there under		
Availment and Utilization of CENVAT of taxes or duty either fully or partially in violation of rules		
Collection of Service Tax but Non-deposition beyond a period of six months		Where amount involved is more than 50 lakhs – period of Imprisonment Upto 7 years
Any other cases including above where amount involved is less than 50 lakhs		Period of Imprisonment Upto 3 years

### c) Introduction of Cognizance of offences

Section 90 had been omitted by Finance (No.2) Act, 1998. However, vide finance bill 2013 it has been re-introduced , which reads as under:

#### **Section 90: Cognizance of offences**

(1) An offence under clause (ii) of sub-section (1) of section 89 shall be cognizable.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences, except the offences specified in sub-section (1), shall be non-cognizable and bailable.

#### **Analyses:**

Thus, the offences referred in clause (ii) of 89(1) {i.e. offence where service tax has been collected but has not been deposited to the credit of central government beyond a period of 6 months from the date on which such payment becomes due } has now been made cognizable.

Further, except the offences referred in para supra, all other offences has now been made non cognizable, but at the same time bailable. {i.e. the offence where evasion of service tax has

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been made knowingly, availment/utilization of CENVAT is made violating the provisions, false books of accounts have been maintained and any other offence}

## d) Introduction of Power to arrest(Sec 91)

Section 91 has been omitted by of Finance (No.2) Act, 1998. However, vide Finance Bill 2013 it has been re-introduced, the same can be read as under:

### **Section 91: Power to Arrest**

(1) If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.

(2) Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.

(3) In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973.

(4) All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.”;

### **Analyses:**

This Finance Bill 2013 has made a remarkable amendment by inserting the provision of providing power to the Central Excise Commissioner to arrest the person if he has a reason to believe that he has committed an offence referred in amended section 89.

Vide this section, the Commissioner can authorize any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.

Further, if the offence is cognizable as explained under new provisions of section 89, the authorised officer has to produce the defaulter before a magistrate within twenty-four hours.

Thus, vide this power now granted to the Central Excise Commissioner, no defaulting person can escape the clutches of law.

## **V Introduction of Amnesty Scheme**

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**Objective of Scheme:-** To provide one time Amnesty Scheme for payment of service tax due or payable under the provisions of Finance Act, 1994 for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 but not paid as on the 1st day of March, 2013 and getting complete waiver from penalty, interest or any other proceedings under the provisions of Finance Act, 1994.

**Person who can apply for Scheme:-**

On whom no notice or order for determination of tax due has been issued or made under Section 72, Section 73 or Section 73A of Finance Act, 1994 before 1<sup>st</sup> March 2013.

**Person who can't apply for Scheme:-**

- Any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return;
- Person on which notice or order of determination is issued in respect to any period on any issues can not file declaration on such issue for subsequent period.
- Any person on whom inquiry/investigation/audit has been initiated by way of search of premises, issue of summons or requiring production of accounts, documents or other evidence and such inquiry, investigation or audit is pending as on the 1st day of March, 2013

**Procedure for applying the Amnesty Scheme**

- Declaration upto 31<sup>st</sup> December 2013 in prescribed form and manner to designated authority.
- To pay not less than fifty per cent of the tax dues so declared along with submission of proof of such payment to the designated authority on or before the 31st day of December, 2013.
- Balance of the tax due declared but not paid shall be required to be paid by the declarant on or before the 30th day of June, 2014.
- However, in case a declarant fails to comply with the time limit as mentioned above but pays the same on or before 31.12.2014, interest shall be payable only for the period of delay as starting from 1.7.2014.
- On furnishing the details of full payment of declared tax dues and the interest, issue of acknowledgement for discharge of such dues by designated authority to the declarant in such form and in such manner as may be prescribed.
- No refund of amount paid under the scheme under any circumstances.
- Amount declared but not paid to be recovered as per the provisions of Section 87 of Finance Act, 1994.

**Failure to make true declaration**

- Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show

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cause why he should not pay the tax dues not paid or short-paid but before the expiry of one year from the date of declaration.

- SCN so issued be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

**Note: Although it is provided that no SCN shall not be issued for such failure after 1 year from the date of declaration, still there appears to be doubt whether provisions of extended period could be invoked because of use of expression “SCN so issued be deemed to have been issued under section 73”.**

### VI Others

- Explanation available under Section 65B is being inserted as an independent provision i.e. Section 65BA w.e.f. 1<sup>st</sup> July, 2012.
- Unlike the provisions of Sub-Section (3) and (3A) of Section 85 of the Finance Act, 1994 which provides the Appellant opportunity to file the appeal before Commissioner (Appeals) even after the expiry of prescribed period of 3/2 months, as the case may be, no such provision was there under Section 86: Appeals to Appellate Tribunal.

Erstwhile, Section 86(5) of the Finance Act, 1994 empowered the Appellate Tribunal:

- i) to admit the appeal filed by the Commissioner of Central Excise or Central Excise Office following the direction of Committee of Chief Commissioner or Committee of Commissioner respectively or
- ii) to permit the filing of a memorandum of cross objection by Commissioner, Central Excise Officer or Assessee;

after the expiry of stipulated time period if it satisfied that there was sufficient cause for not presenting it within that period. Since there was no such provision in case the appeal is filed by assessee, he could only resort to the provisions of Section 86(6A) by filing a COD application with DD of Rs. 500/-.

However, vide Finance Bill, 2013, the matter is being regularized and now delay in filing of appeal by assessee also will be taken care by Section 86(5) of the Finance Act, 1994 on the similar footing of Cross objection and appeal filed by Departmental officers.

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## **B. Changes applicable w.e.f. 1<sup>st</sup> March, 2013**

### **I. Changes in Abatement Scheme:-**

Abatement available to developers of complex, building or civil structure is being reduced from the existing 75% to 70% in following cases:-

- a. Residential properties having a carpet area above 2000 sq ft and where amount charged is equal to or more than Rs. 1 crore,
- b. Commercial properties.

*(Notification No. 02/2013-ST dated 1<sup>st</sup> March, 2013)*

### **II. Advance Ruling**

The benefit of Advance Ruling Authority is being extended to resident public limited companies.

*(Notification No. 04/2013-ST dated 1<sup>st</sup> March, 2013)*

### **III. Changes in CENVAT Credit Rules, 2004**

In case of removal of inputs or capital goods as such; or removal of capital goods after being used; or written off or provision to written off of inputs or capital goods before being put to use; service provider/manufacturer is liable to pay an amount calculated as per Rule 3(5)/(5A)/(5B) of CCR, 2004. Now explanation has been added after proviso to Rule 3(5B) so as to apply recovery provisions as contained in Rule 14 of CCR, 2004, in cases service provider/manufacturer fails to pay the amount so calculated.

*(Notification No. 03/2013-CE(NT) dated 1<sup>st</sup> March, 2013)*

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## C. Changes applicable w.e.f. 1<sup>st</sup> April, 2013

### Changes in Mega Exemptions:-

- **Exemption in relation to Educational Institute**

OLD PROVISIONS	NEW PROVISIONS
In Point no. 9, Services provided to or by an <b>educational institution</b> in respect of education exempted from service tax, by way of,- (a) Auxiliary educational services; or (b) Renting of immovable property;	Services provided to an educational institution in respect of education exempted from service tax, by way of,- (a) Auxiliary educational services; or (b) Renting of immovable property;
<p><b>Analysis:-</b> This will have the effect of restricting the scope of exemption to “Auxiliary educational services” and “Renting of immovable property services” only when</p> <ol style="list-style-type: none"> <li>1. Provided by any person to Educational Institutes;</li> <li>2. Provided by one Educational Institute to another Educational Institute.</li> </ol>	

- **Exemption in relation to Cinematographic Films**

Old Provision	New Provision
In Point no. 15, Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or <b>cinematographic films</b> .	Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright- (a) Covered under clause (a) of sub section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or  (b) Of <b>cinematograph films</b> for exhibition in a cinema hall or cinema theatre
<p><b>Analysis:</b> Now only services of copyright of cinematographic films for exhibition in a cinema hall or cinema theatre are covered under Mega Notification and service tax will be applicable on services provided by temporary transfer or use or enjoyment of copyright for exhibition other than in a cinema hall or cinema theatre.</p> <p>E.g.; In case copyright is given to any channel like Sony TV by Raj Kumar Hirani having the copyright of movie 3 idiots, is now taxable under the service tax from 1<sup>st</sup> April 2013</p>	

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- **Exemption relating to Restaurants**

Old Provision	New Provision
<p>In Point no. 19, Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having</p> <p>(i) The facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and</p> <p>(ii) A license to serve alcoholic beverages.</p>	<p>Now the following provision has been substituted:</p> <p>Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of <b>air-conditioning or central air-heating in any part of the establishment</b>, at any time during the year from 1<sup>st</sup> day of April 2013</p>
<p>Analysis: Now, Service Tax will apply on the restaurant, eating joint or mess having air-conditioning or central air-heating facility. And this may apply to almost all the restaurants, eating joint, or a mess like Mc Donald, Sagar Ratna and Kfc</p>	

- **Exemption relating to transportation of goods by Rail or vessel**

OLD PROVISIONS	NEW PROVISIONS
<p>In Point No. 20 Service by way of <b>transportation by rail or a vessel</b> from one place in India to another of the following goods:-</p> <p>(a) Petroleum and Petroleum products falling under chapter heading 2710 and 2711 of the 1st schedule to the Central Excise tariff Act, 1985 (5 of 1986);</p> <p>(b) Relief material meant for victim of natural or man-made disaster, calamities, accidents or mishaps;</p> <p>(c) Defence or military equipments;</p> <p>(d) Postal mail or mail bags;</p> <p>(e) Household effects;</p> <p>(f) Newspaper or magazines registered with the registrar of newspaper;</p> <p>(g) Railway equipment or materials;</p> <p>(h) Agriculture produce;</p> <p>(i) Foods stuff including flours, tea, coffee, jiggery, sugar, milk products, salt and edible oil excluding alcoholic</p>	<p>Service by way of transportation by rail or a vessel from one place in India to another of the following goods:-</p> <p>(a) Relief material meant for victim of natural or man-made disaster, calamities, accidents or mishaps;</p> <p>(b) Defence or military equipment;</p> <p>(c) Newspaper or magazines registered with the registrar of newspaper;</p> <p>(d) Railway equipment or materials;</p> <p>(e) Agriculture produce;</p> <p>(f) Foods stuff including flours, tea, coffee, jiggery, sugar, milk products, salt and edible oil excluding alcoholic beverages or;</p> <p>(g) Chemical fertilizers and oil cakes.</p>

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beverages or; (j) Chemical fertilizers and oil cakes.	
<b>Analysis:-Service tax will be applicable</b> on the services provided by way of transportation by rail or a vessel from one place in India to another of the following goods:- <ul style="list-style-type: none"> <li>(a) Petroleum and Petroleum products falling under chapter heading 2710 and 2711 of the 1st schedule to the Central Excise tariff Act, 1985 (5 of 1986);</li> <li>(b) Postal mail or mail bags;</li> <li>(c) Household effects.</li> </ul>	

• **Exemption relating to GTA**

OLD PROVISIONS	NEW PROVISIONS
In Point no. 21, Services provided by a goods transport agency by way of transportation of <ul style="list-style-type: none"> <li>(a) Fruits, vegetables, eggs, milk, food, grains or pulses in a goods carriage.</li> <li>(b) Goods where gross amount charged for the transportation of goods on consignment transported in a single goods carriage does not exceed one thousand five hundred rupees or ;</li> <li>(c) Goods where gross amount charged for transportation of all such goods for a single consignee in a goods carriage does not exceed rupees seven hundred fifty;</li> </ul>	Services provided by a goods transport agency by way of transport in a goods carriage of:- <ul style="list-style-type: none"> <li>(a) Agriculture produce;</li> <li>(b) Goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees or ;</li> <li>(c) Goods where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;</li> <li>(d) Foods stuff including flours, tea, coffee, jiggery, sugar, milk products, salt and edible oil excluding alcoholic beverages or;</li> <li>(e) Chemical fertilizers and oil cakes;</li> <li>(f) Newspaper or magazines registered with the registrar of newspaper;</li> <li>(g) Relief material meant for victim of natural or man-made disaster, calamities, accidents or mishaps;</li> <li>(h) Defence or military equipment;</li> </ul>
<b>Analysis:-</b> Service provided by Goods Transport Agency by way of transport in a goods carriage <b><u>NON-TAXABLE</u></b> <ul style="list-style-type: none"> <li>• Agriculture produce;</li> <li>• Foods stuff including flours, tea, coffee, jiggery, sugar, milk products, salt and</li> </ul>	

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edible oil excluding alcoholic beverages or; <ul style="list-style-type: none"> <li>• Chemical fertilizers and oil cakes;</li> <li>• Newspaper or magazines registered with the registrar of newspaper;</li> <li>• Relief material meant for victim of natural or man-made disaster, calamities, accidents or mishaps;</li> <li>• Defence or military equipment;</li> </ul>
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- **Exemption related to parking**

Old Provision	New Provision
In Point no. 24, Services by way of motor vehicle parking to general public excluding leasing of space to an entity for providing such parking facility.	Now Point No. 24 has been omitted  Service by way of vehicle parking to general public is taxable from 1 <sup>st</sup> day of April 2013.
<b>Analysis:-</b> Service by way of vehicle parking to general public is taxable from 1 <sup>st</sup> day of April 2013.	

- **Services provided to Govt., Local Authority or Governmental Authority**

Old Provision	New Provision
In Point no. 25, Service provided to Government, a local authority or a governmental authority by way of: <ul style="list-style-type: none"> <li>(a) Carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or</li> <li>(b) Repair or maintenance of a vessel or an aircraft.</li> </ul>	In item (b), for the words, “a vessel or an aircraft”, the words “ a vessel” shall be substituted
<b>Analysis:-</b> Now Service provided to Government, a local authority or a governmental authority, by way of repair or maintenance of aircraft will be taxable.	

- **Exemption related to Charities**

Definition of Charitable Activities as given in Clause (k) of Definition Part of Mega Notification No. 25/2012-ST dt. 20.6.2012 is being amended so that there will be no separate threshold limit for granting the exemption to activities relating to advancement of any other object of general public utility and will be governed by provisions as applicable to SSI to claim exemption from payment of service tax.