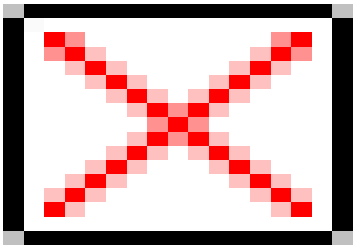
No Service Tax from 1.7.2012?

 **TIOL-DDT 1880**

15.06.2012
Friday

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NO, it is not a joke - It is a startling chilling fact! The Parliament of India has virtually abolished Service Tax in India with effect from 01.07.2012.

Read on for the shocking details.

The shift from the positive list to the negative list looked very positive with some carefully drafted amendments to the Finance Act, 1994 being notified with effect from 01.07.2012. It will be curtains down on some important sections of the Finance Act, 1994 and some new Sections are going to be effective from 01.07.2012. But it appears that the Team TRU has carefully put bones, muscles and nerves together but forgot to put the most important LIFE in it resulting in a lifeless body from 01.07.2012. Yes, there is no requirement to pay service tax from 01.07.2012 as under Section 68, an assessee is required to pay service tax **at the rates mentioned under Section 66**, a dead Charging Section from 1 st July 2012.

Upto 30.06.2012, the charging Section is Section 66 of the Finance Act, 1994 according to which service tax is levied at the rate of 12% on all taxable services. With effect from 01.07.0212, Section 66 will no longer be in force and a new charging section 66B will take its place.

Section 68 stipulates that service tax is payable by the service providers at the rate specified under **Section 66**
in such manner as may be prescribed. This Section is continued in the Finance Act, 1994 even from 01.07.2012. The provisions of this Section upto and from 01.07.2012 read as under:

Upto 30.06.2012:

> ***SECTION 68. Payment of service tax. -Â***
> *(1) Every person providing taxable service to any person shall pay service tax at the rate specified in* ***section 66***
> *in such manner and within such period as may be prescribed.*
>
> *(2) Notwithstanding anything contained in sub-section (1), in respect of any taxable service notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in* ***section 66***
> *and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.*

From 01.07.2012 (after incorporating the amendments made vide Finance Act, 2012)

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

(2) Notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified **in section 66** and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

> ¶*Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.*¶*;*

So, with effect from 01.07.2012, the assessees are required to pay service tax at the rate specified under Section 66, but there would be no Section 66 in the Statute. **AND SO, THEY NEED NOT PAY ANY TAX**
. Hence, all the exercise of moving to negative list will go down the drain because of not amending Section 68 to substitute the charging section referred therein with the new charging section, i.e., 66B.

The Government has to do something urgently - in any case not later than 30.06.2012 - if they want to collect Service Tax from 1.7.2012. But what can they really do, notwithstanding Section 95 1(I)? Can the babus amend an Act passed by Parliament even if it is to remove difficulties?

DDT is grateful to Rajendra Rathi, Cost and Management Accountant, who provided valuable input on this Section 66/68 fiasco.

Import of Vessels - Procedure - Clarifications

CBEC
had vide F.No.450/79/2010-Cus.IV dated 23.09.2010 clarified that the requirement for filing Import General Manifest (IGM) and Bill of Entry should be complied with even in cases, where goods are exempt from payment of any duty. The jurisdictional Commissioners were also instructed to review the situation, and take appropriate action for past cases, including adjudication, if warranted, in case of non-fulfilment of aforesaid filing of documents.

Trade has brought to the notice of the Government that Customs field formations are insisting on filing of IGM and Bill of Entry even in respect of those vessels that were imported in the past and which were exempt from payment of import duty.

Now, Board gives further clarifications for different kinds of vessels:

Foreign flag vessels:
These are the vessels that are registered abroad and its entry into the country is for carrying cargo or passengers, as a conveyance. Hence, there is no requirement for filing an IGM, Bill of Entry for foreign flag vessel which is being used as conveyance [**WHY?**
]. However, the requirement for filing an import manifest in the prescribed manner for the goods or passengers which are being carried in the vessel, on its entry into an Indian port in terms of the provisions under Section 30 of the Customs Act needs to be complied with.

Indian Flag Vessel:
Â In terms of the provisions of Part-V of the Merchant Shipping Act, 1958, vessels entering into India for the first time, are required to be registered with specified authority of the Mercantile Marine Department as Indian ship, which can then display the national character of the ship as Indian Flag Vessel for the purpose of Customs and other purposes specified in the said Act. Such Indian ship or vessel may be used for foreign run or exclusively for coastal run/ trade. Further, any ship or vessel may be taken outside India or chartered for coastal trade in India, only after obtaining the requisite licence from the Director General of Shipping, under the provisions of Section 406 or 407, respectively, of the said Merchant Shipping Act. Hence, in all such cases the Customs declarations such as IGM, Bill of Entry is required to be filed with jurisdictional Customs authority.

Vessels for conversion into coastal run:
Â Any vessel could be used for coastal run/ trade after obtaining requisite clearance from Director General of Shipping and on fulfilment of certain specified conditions under Section 407 of the Merchant Shipping Act, 1958. In case of foreign going vessel, exemption from import duties, including CVD, have been extended vide serial No.462 of notification No.12/2012-Cus. dated 17.03.2012, subject to prescribed conditions, which binds the importer to file fresh Bill of Entry at the time of its conversion for coastal run/ trade and payment of applicable duty on such conversion of vessel for costal run/ trade. Similarly, excise duty is also payable on vessels which are being used for coastal trade vide serial No.306 of notification No.12/2012-Cus. dated 17.03.2012. Hence, if any Indian Flag vessel which is used for time being as foreign going vessel is converted for use in coastal trade or any vessel which is to be used for coastal trade, there is a need to file a Bill of Entry for payment of applicable duty as CVD.

Vessels for breaking up:
Â Vessel and other floating structures intended for breaking up are liable to payment of applicable duty. All vessels for the transport of persons or goods,

falling under heading 8901 (excluding those which are imported for breaking up) are fully exempt from payment of import duty under serial No.461 of notification No.12/2012-Cus. dated 17.03.2012, subject to the condition that the importer should file fresh Bill of Entry at the time of its breaking up after its importation. Hence, in these cases the importer has to file an IGM and Bill of Entry, claiming the exemption as may be applicable, at the time of initial import and later file fresh Bill of Entry at the time of breaking up of the vessel as per the condition attached to the aforesaid exemption.

Board also clarifies that all vessels including foreign going vessels for its entry into / exit from the country during its journey as foreign going vessel and the Indian flag vessel / Indian Ship for subsequent use as foreign going vessel would not require filing of IGM and Bill of Entry as conveyance, since the same are not imported goods to be cleared for home consumption.

Board wants to adjudicate the cases involving any violation where the IGM or Bill of Entry in respect of import of vessel were not filed at the time of import, on its first arrival in India or on its conversion into coastal trade and appropriate penal action be taken against the offenders.

After all, ships were coming to India for hundreds of years and why this confusion now? If IGM and Bill of Entry are to be filed, why did the Customs allow the ships without them all these years?

And why is it that there is no similar confusion for aircrafts and trucks coming from foreign countries?

Please see DDT 1454-28.09.2010 and 2012-TIOL-260-HC-MUM-CUS

Circular No. 16/2012 - Cus., Dated: June 13, 2012

Amendment of SION E-125 - Food Group

DGFT has amended the description of import item “Tonsil Bleaching Earth” appearing at Serial No.2 of SION E-125 under Food Product Group to read as “ **Activated Bleaching Earth**
”. The word ¶Tonsil Bleaching Earth¶ appearing in SION E-125 for export item ‘Shea Stearine' has been substituted by ¶Activated Bleaching Earth¶ as Tonsil is the brand name of the Company.Â

DGFT Public Notice No. 05/(RE-2012)/2009-14., Dated: June 14, 2012

Income Tax - No TDS on Transfer of Software - but too tedious to follow

GOVERNMENT
has notified that no deduction of tax shall be madeÂ on payment by a person (the transferee) for acquisition of software from another person, being a resident, (the transferor), where-

(i) The software is acquired in a subsequent transfer and the transferor has transferred the software without any modification,

(ii) tax has been deducted-

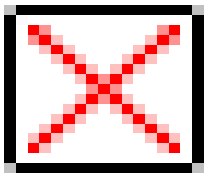
(a) under section 194J on payment for any previous transfer of such software; or

(b) under section 195 on payment for any previous transfer of such software from a non-resident, and

(iii) The transferee obtains a declaration from the transferor that the tax has been deducted either under sub-clause (a) or (b) of clause (ii) along with the Permanent Account Number of the transferor.

Who is going to get the benefit?

CBDT Notification No. 21/2012., Dated: June 13, 2012



Central Excise

Bank penalised under Central Excise Law for discounting export bills - clear non-application of mind and ignorance on the part of the adjudicating authority. Such an order is perverse and bad in law.: CESTAT

THISÂ
is a Central Excise appeal and the appellant is Dena Bank. What does a bank have to do with Central Excise? One may ask. Had it been a Service Tax case, it was understandable but a CE case!

The short question involved is whether the act of discounting export bills or sending export bills for collection as part of normal banking operations by the appellant bank would render the export goods liable to confiscation and the bank liable to penalty. The liability to confiscation under excise law arises for violation of provisions of Central Excise Act and rules made thereunder. A banking transaction would not normally violate the Central Excise law or the Rules, especially when the same is carried out as part of the normal banking operations.Â

Income Tax

Whether when the same AO has jurisdiction to assess the searched assessee u/s 158BC and the other assessee u/s 158BD whose undisclosed income is also found in the course of such search, there is any necessity for the AO to record satisfaction as required u/s 158BD: NO, rules High Court

EVIDENCE
regarding business and earning of unaccounted income by the respondent-firm were found in the course of search in the residential and business premises of Sri.Abdul Gafoor, the husband of Mrs.Souda Gafoor holding 95% of the shares of the respondent-firm, notice was issued u/s 158BD against the respondent-firm based on materials gathered in search in the business and residential premises of the respondent-firm's managing partner's husband. It so happened that since the business premises and the residence of Sri.Abdul Gafoor and his wife Mrs.Souda Gafoor who is the managing partner of the respondent-assessee were one and the same, the AO who has jurisdiction to assess the searched assessees was the same officer who has jurisdiction to assess the respondent-firm as well. So much so, there was no scope for transfer of file from one AO having jurisdiction over the searched assessee to another AO for assessment u/s 158BD as both the searched assessee and the assessee in respect of whom details of suppressed income were received, were assessable by the same AO. The Tribunal cancelled the block assessment confirmed in first appeal for the reason that AO has not recorded reasons for issuance of notice for assessment u/s 158BD.

Service Tax

RefundÂ - argument of department that the service tax refund will be available only for services rendered on or after 03.03.2009 does not appear to have any legal basis - only requirement is that ST on the services should have been paid on or after 03.03.2009 - it is immaterial when services had been rendered - Appeal allowed with consequential relief: CESTAT

The only requirement for claiming refund is that service tax on the services should have been paid on or after 03.03.2009. It is immaterial when the services had been rendered. In other words, even if the services were rendered prior to 03.03.2009 but the recipient has paid the service tax on or after 3.3.2009, he can avail service tax refund as provided for in the Notification.

See our columns Monday for the judgements

Until Monday with more DDT

Have a Nice Weekend

Mail your comments to **vijaywrite@taxindiaonline.com**