

## No More Cess from July 1, 2012?

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A careful reading of the various provisions/notifications ushering in the new negative list based concept of service tax indicates that there are many pitfalls which are likely to cause difficulties for the Government.

Section 91 of the Finance Act (No.2) Act, 2004 levied education cess at the rate of 2% and Section 95 reads as under:

*¶The Education Cess levied under Section 91 in the case of all services which are taxable services shall be a tax (in this Section referred to as The Education Cess on taxable service) at the rate of 2% calculated on the tax which is levied under Section 66 of the Finance Act, 1994 (32 of 1994).¶*

A plain reading of Finance Act, 2004 indicates that education cess of 2% was levied on the service tax payable under Section 66.

Section 136 of the Finance Act, 2007 imposed Secondary and Higher Education Cess and as per Section 140, the cess was at the rate of 1% calculated on the tax which is levied and collected under Section 66 of the Finance Act, 1994 (32 of 1994).

The Central Government vide Notification No.22/2012 dated 05.06.2012 appointed 01.07.2012 as the date from which the provision of Section 66 of the Finance Act, 1994 ceases to apply except as respects things done or omitted to be done before the said Section 66 so ceases to apply. Section 66 ceases to exist from 01.07.2012 and Section 66B which is the new charging section for the levy of service tax is effective from 01.07.2012.

Section 66B reads as under:

*There shall be levied a tax (hereinafter referred to as the service tax) at the rate of 12% on the value of all services other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.”*

Finance Act, 2012 has not made any amendment to Section 95 of the Finance Act, 2004 and Section 140 of the Finance Act, 2007 so as to enable the levy of Education Cess and Secondary and Higher Education Cess payable on service tax levied under Section 66B of the Finance Act, 2012.

Therefore when service tax as a tax is levied only under Section 66B, it may not be possible to levy education cess at 2% and secondary education cess at 1% which is a cess on a tax referred to in Section 66. With due respect, the Removal of Difficulty Order cannot be a solution since the cess is levied under Finance Act, 2004 and Finance Act, 2007 and has no connection to Section 66B introduced by Finance Act, 2012.