

J.B. Nagar CPE Study Circle

Welcome all members

Subject : Negative List of Services
Important Exemptions under Service Tax

Date : Saturday, 25th November 2012

Venue : Hotel VITS, Andheri Kurla Road, Kondivita Lane,
Next to Trade Star, Andheri(E), Mumbai-59

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PREAMBLE

- Abbreviations:
 - The Act – Finance Act, 1994 (Service tax legislation)–amended till date
 - The Rule – Service Tax Rules, 1994 – amended till date
- Purpose of presentation is to enlighten participants on recent Service tax amendments pertaining to:
 - Negative List of Services
 - Mega Exemption Notification No. 25/2012 – ST dated 20.06.2012
- Presentation deals only with above referred amendments
- Presentation does not deal with other amendments made by Finance Act, 2012

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Charging Provision – Section 66B w.e.f. 01.07.2012		
<ul style="list-style-type: none">➤ There shall be levied a tax (hereinafter referred to as the service tax)➤ At the rate of 12 per cent➤ On the value of all services➤ Other than those specified in the Negative list➤ Provided or to be provided in the taxable territory➤ By one person to another person➤ Collected in such a manner as prescribed.		
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CHECKLIST FOR DETERMINING TAXABILITY OF SERVICE – w.e.f. 01.07.2012		
<ul style="list-style-type: none">➤ Whether activity amounts to “Service” as defined U/s.65B(44)?➤ Whether activity amounts to “Declared service” as defined U/s.66E?➤ If answer to any of above is yes, check up whether said activity falls under negative list of services U/s. 66D?➤ If answer to above is no, refer place of Provision of Service Rules to check up whether services are provided within taxable territory?➤ If answer to above is yes, check up whether activity is exempted under Mega Notification No. 25/2012-ST dated 20.06.2012 or any other notification?➤ If answer to above is no, activities is liable to service tax		
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NEGATIVE LIST OF SERVICES

w.e.f. 01.07.2012

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Negative List of Services [Section 66D] w.e.f. 01.07.2012

- Services provided by Central Government, State Government, Union Territory or a local authority except for following services
 - (i) speed post, express parcel post, life insurance and agency services provided by post department to a person other than Government;
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) transport of goods or passengers; or
 - (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities.
- Services by the Reserve Bank of India.
- Services by a foreign diplomatic mission located in India.

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Negative List of Services [Section 66D] w.e.f. 01.07.2012

- Specified services relating to agriculture or agriculture produce
 - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
 - (ii) supply of farm labour;
 - (iii) processes carried out by agricultural farm which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) loading, unloading, packing, storage or warehousing;
 - (vi) agricultural extension service ;
 - (vii) services by agricultural produce marketing committee / board or service provided by commission agent for sale or purchase

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Negative List of Services [Section 66D] w.e.f. 01.07.2012

- Trading of goods
- Process amounting to manufacture or production of goods
- Selling of space or time slots for advertisements other than advertisements broadcast by radio or television
- Service by way of access to a road or a bridge on payment of toll charges
- Betting, gambling or lottery
- Admission to entertainment events or access to amusement facilities
- Transmission or distribution of electricity by "Electricity Transmission or Distribution Utility"
- Services by way of –
 - (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of an approved vocational education course

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Negative List of Services [Section 66D] w.e.f. 01.07.2012

- (iii) education as a part of a curriculum for obtaining a qualification recognized by law;
- Services by way of renting of residential dwelling for use as residence;
- Services by way of –
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - (ii) inter-se sale / purchase of foreign currency amongst banks or authorized dealers or amongst banks and such dealers;
- Transportation of passengers
 - (i) a stage carriage;
 - (ii) metro, monorail or tramway;
 - (iii) inland waterways;
 - (iv) metered cabs, radio taxis or auto rickshaws;

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Negative List of Services [Section 66D] w.e.f. 01.07.2012

- (iv) railways in a class other than –
 - first class; or
 - an air conditioned coach;
- (v) public transport in a vessel other than predominantly for tourism purpose between places located in India
- Services by way of transportation of goods –
 - (i) by road except the services of –
 - a goods transportation agency; or
 - a courier agency;
 - (ii) by an aircraft or a vessel from a place outside India to customs station of clearance
 - (iii) by inland waterways;
- Funeral, burial, crematorium or mortuary services including transportation of the deceased

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IMPORTANT EXEMPTIONS

w.e.f. 01.07.2012

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- This notification is effective from 01.07.2012
- Services provided to the UN / specified international organizations
 - Also exempted earlier
- Health care services by clinical establishment, authorized medical practitioner or paramedics
 - Non-taxable earlier
- Services by a veterinary clinic
 - Non-taxable earlier
- Specified Charitable activities by an entity registered u/s 12AA of the Income-tax Act, 1961
 - Earlier no such specific exemption for trust
- Services of renting of precincts (land or building) of a religious place meant for general public conduct of any religious ceremony
 - Non-taxable earlier

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Services provided by an arbitral tribunal to:
 - a. Any person other than a business entity
 - b. A business entity with a turnover upto Rs. 10 Lakh in the preceding financial year
 - Earlier arbitration service was exempted under Notification No.45/2011-ST dt. 12.09.2011
- Services provided by an individual as an advocate or a partnership firm of advocates by way of legal services to:
 - a. An advocate or partnership firm of advocates providing legal services:
 - b. Any person other than a business entity;
 - c. A business entity with a turnover upto Rs. 10 Lakh in the preceding financial year
 - Earlier legal consultancy provided by an individual to individual, representation services provided by an individual to an individual / non-business entity was not taxable

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Services provided by a person represented on an arbitral tribunal to an arbitral tribunal
 - Earlier arbitration service was exempted under Notification No.45/2011-ST dt. 12.09.2011
- Technical testing / analysis of newly developed drugs / vaccines / herbal remedies on human participants by an approved clinical research organization
 - Earlier exempted under Notification No. 11/2007-ST dated 01.03.2007
- Training / coaching in recreational activities relating to arts, culture or sports
 - Earlier services relating to sports was not taxable.
 - Earlier services relating to recreational activities such as dance, singing, martial arts or hobbies were exempted under Notification No.3/2010-ST dt. 27.02.2010

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Sponsorship of tournaments or championships organized by notified organizations
 - Earlier exempt vide Notification No.30/2010-ST dt. 01.07.2010
- Services of auxiliary educational services provided to or by an educational institution in respect of education exempted from Service tax:
 - No specific exemption earlier
- Services of renting of immovable property provided to or by an educational institution in respect of education exempted from Service tax:
 - Earlier renting of immovable property to an education was exempted
- Services provided to a recognized sports body by an individual as a player, referee, umpire, coach or manager for participation in a tournament or championship another recognized sports body
 - Non taxable earlier

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Services provided to the Government or local authority for erection, construction, erection, commissioning, installation, completion, fitting out, maintenance, repair, alteration, renovation or restoration of :
 - a civil structure meant predominantly for use other than for commerce, industry or any other business or profession
 - a historical monument or archaeological site
 - a structure meant predominantly for use as an educational , clinical, art or cultural establishment
 - canal, dam or other irrigation works pipeline, conduit or plant for drinking water supply, water treatment, sewerage treatment or disposal; or
 - a residential complex predominantly meant for self-use or use of their employees or others such as MP, MLA, Member of local authority, etc
 - Earlier above services were non taxable

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Erection, construction, erection, commissioning, installation, completion, fitting out, maintenance, repair, alteration, renovation or restoration of –
 - road, bridge, tunnel, transport terminal for use by general public;
 - Earlier non-taxable, even if provided to private parties (subject to controversy of maintenance and repairs)
 - civil structure or any original works pertaining to scheme under Jawaharlal Nehru National Urban Renewal Mission/ Rajiv Awaas Yojana
 - Also exempted earlier
 - building owned by an entity registered under section 12AA of the Income-tax Act, 1961 and meant predominantly for religious use by general public
 - Being non-commercial construction, earlier it was non-taxable subject to controversy of maintenance and repairs

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- pollution control or effluent treatment plant except located as a part of a factory or structure meant for funeral, burial or cremation of deceased;
 - No such exemption earlier
- Erection or construction of original works pertaining to
 - airport, port or railways, including monorail or metro;
 - Non taxable earlier
 - single residential unit otherwise as a part of a residential complex – ??
 - Earlier complex having 12 or less residential units in complex and construction for personal use were non taxable
 - low-cost houses up to a carpet area of 60 square metres per house in a approved housing project
 - Earlier only specified schemes were exempt

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Storage infrastructure for agricultural produce including a cold storages for such purposes; or
 - Earlier erection of cold storage equipments were exempt under Notification No. 12/2010-ST dt. 27.02.2010
- mechanized food grain handling system, machinery or equipment for units processing agricultural produce
 - Earlier exempted under Notification No. 12/2010-ST dt. 27.02.2010
- Temporary transfer or permitting the use or enjoyment of a copyright relating to original literary, dramatic, musical, artistic works or cinematograph films
 - Earlier all such services were non-taxable except service in relation to cinematograph films

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Rail or water transportation of specified/essential goods
 - Earlier exempt under various notifications
- Road Transportation of :
 - fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage
 - Earlier exempt under notification No.33/2004-ST dt.03.12.2004
 - goods in a single carriage where gross freight is less than Rs. 1500/-
 - Earlier exempt under notification No.34/2004-ST dt.03.12.2004
 - goods where gross freight for single consignment is less than Rs.750/-
 - Earlier exempt under notification No.34/2004-ST dt.03.12.2004
- Hiring of :
 - a motor vehicle (meant to carry more than twelve passengers) to a state transport undertaking
 - motor vehicle for goods transportation to goods transport agency
 - Earlier exempt under notification No.1/2009-ST dt.05.01.2009

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Transport of passengers by :
 - air where passengers are embarking or terminating in airports located in specified states
 - Earlier exempt under Notification 27/2010-ST dt. 22.06.2010
 - contract carriage other than for tourism, conducted tour, charter / hire
 - Non taxable earlier
 - Ropeway, cable car or aerial tramway
 - Non taxable earlier
- Motor vehicle parking to general public excluding leasing of space to an entity for providing such parking facility
 - Non taxable earlier

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Following Services provided to the Government or a local authority or government authority by way of:
 - 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,
 - slum improvement and upgradation
 - Earlier non taxable
 - Repair or maintenance of a vessel or an aircraft
- General insurance under specified schemes
 - Earlier exemption was available for most of the specified schemes

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Services provided by an incubatee up to a total business turnover of Rs.50 lacs in a financial year subject to certain conditions
 - Earlier exempt under Notification No.10/2007-ST dt.01.03.2007
- Services by an organizer to any person in respect of business exhibition held outside India
 - Earlier exempt under Notification No.5/2011-ST dt.01.03.2011
- Service by an unincorporated body / entity registered as a society to own members by way of reimbursement of charges or share of contribution—
 - as a trade union;
 - No such specific exemption earlier
 - for the provision of exempt services by the entity to third persons; or
 - Also exempted earlier
 - up to an amount of Rs. 5000/- per month per member of housing society/residential complex towards common services.
 - Earlier exempt up to Rs.3,000/- p.m. – Notification 8/2007-ST dt.01.03.2007

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Services provided by :
 - sub-broker or an authorized person to a stock broker
 - authorized person to a member of a commodity exchange
 - mutual fund agent/distributor to mutual fund / AMC
 - selling/marketing agent of lottery tickets to distributor or selling agent
 - selling agent / distributor of SIM cards or recharge coupon vouchers
 - business facilitator or a business correspondent to a banking company or an insurance company in a rural area
 - sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt:
 - Earlier only services provided by sub-broker to stock broker were exempt under Notification No.10/2007-ST dt.01.03.2007
 - Other exemption are new exemptions
- Carrying out an intermediate production process as job work in relation to:
 - agriculture, printing or textile processing
 - Earlier exempt under Notification 14/2004-ST dt. 10.09.2004

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals
 - Earlier exempt under Notification 19/2006-ST dt. 25.04.2006
- goods on which appropriate duty is payable by the principal manufacturer;
 - Earlier exempt under Notification 8/2005-ST dt. 01.03.2005
- specified processes in the course of manufacture of parts of cycles or sewing machines up to specified limits
 - Also exempted earlier
- Services of :
 - departmentally run public telephones
 - guaranteed public telephones operating only for local calls; or
 - free telephone at airport and hospitals where no bills are being issued
 - Earlier exempt under Notification 3/2006-ST dt. 01.03.2005

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Services of slaughtering of animals
 - Non taxable earlier
- Services received from service provider located in non-taxable territory by:
 - the Government, a local authority or governmental authority an individual in relation to any purpose other than industry, business or commerce; or
 - an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities
 - a person located in a non-taxable territory;
 - Earlier no such specific exemption
- Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material
 - Non taxable earlier

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Mega Exemption Notification – 25/2012-ST dated 20.06.2012

- Services by Employee's State Insurance Corporation to persons governed under the Employee's Insurance Act, 1948
 - Non taxable earlier
- Services by way of transfer of a going concern, as a whole or an independent part thereof;
 - Non taxable earlier
- Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
 - Non taxable earlier
- Services by a governmental authority by way of an activity in relation to any function entrusted to a municipality under Article 243W of the Constitution;
 - Non taxable earlier

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Other Exemptions

- Exemption in respect research and development cess (R&D cess) – i.e. **Notification No. 14/2012 - ST, Dated: March 17, 2012**
- Services provided to any person, for official use or personal use (including family member) of foreign diplomatic mission / consular post in India – **Notification No 27/2012-ST dated 20.06.2012**
- Exemption in respect of property tax on renting of immovable property [Service tax paid or payable shall be excluded from the gross value] **Notification No 29/2012-ST dated 20.06.2012**
- Goods transport agent's services used for transport of export of goods from Container Freight Station / Inland Container Port to Port or Airport – **Notification No 31/2012-ST dated 20.06.2012**

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Other Exemptions

- Services provided by:
 - Recognized technology business incubator (TBI)
 - Recognized Science and Technology Entrepreneurship Park (STEP)**Notification No 32/2012-ST dated 20.06.2012**
- Small service provider exemption or threshold exemption
Notification No 33/2012-ST dated 20.06.2012
- Taxable services received by SEZ unit or developer of SEZ
Notification No 40/2012-ST dated 20.06.2012

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Retrospective Beneficial Amendments – w.e.f .28.05.2012

- Retrospective exemption granted for Management, Maintenance or repair services during the period 16.06.2005 to 26.07.2009 in respect of:
 - Road
 - Non-Commercial Government Buildings
 - Service provider entitled to claim refund of such tax within 6 months from 28.05.2012 (enactment date)
- Retrospective exemption granted to a Club or Association (including registered co-operative societies) in respect of common facility setup for specified effluent treatment plants w.e.f. 16.06.2005.
 - Service provider entitled to claim refund of such tax within 6 months from 28.05.2012 (enactment date)
- Immunity from Penalty for failure to pay tax on “renting of immovable property” where assessee pays service tax due as on 06.03.2012 along with interest within 6 month from 28.05.2012 (enactment date)

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Words of Caution

- Views expressed are the personal views of faculty based on his interpretation of law
- Application/implications of various provisions will vary on facts of the case and law prevailing on relevant time
- Contents of this presentation should not be construed as legal or professional advice
- This is an educational meeting arranged with clear understanding that neither the Faculty nor the study circle will be responsible for any error, omission, commission and result of any action taken by participant or anyone on the basis of this presentation

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