- RECENT PRONOUNCEMENTS UNDER SERVICE TAX

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IMPORTANT NOTIFICATIONS, CIRCULARS, TRADE NOTICE & JUDICIAL DECISIONS UNDER SERVICE TAX LAW

☞ INTERIM BUDGET PROPOSALS

Notification 4/2014 w.e.f. 17th February,2014

- New entry 2A inserted in the mega exemption notification whereby exemption is granted to services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.

- **Tax Research Unit of Ministry of Finance (DR), vide DOF No.334/03/2014-TRU dated 17th February,2014** has clarified that exemption granted to services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation would cover services provided by cord blood banks, such as collection of umbilical cord blood, processing the same for segregation of stem cells, testing and cryo-preservation of stem cells.

Notification 4/2014 w.e.f. 17th February,2014

- New entry 40 inserted in the mega exemption notification whereby exemption is granted to services by way of loading, unloading, packing, storage or warehousing of **"RICE"**.

- **CBEC Circular No.177/03/2014 - ST dated 17th February,2014** clarifies the doubts that arouse in the context of the definition of "agricultural produce" u/s 65B(5) which includes paddy but excludes rice. That many benefits available to agricultural produce in the negative list [section 66D(d)] have been extended to rice, by way of appropriate entries in the exemption notification.

    - Transportation of rice by a rail or vessel is covered under entry 20(i) of notification 25/2012, since rice amounts to food stuff.
    - Transportation of rice by a GTA is exempt under entry 21(d) of notification 25/2012 w.e.f. 1st March,2013, since rice amounts to food stuff
    - Milling of paddy into rice on job work basis is exempt under sl.no.30 (a) of exemption notification 25/2012, since such milling of paddy is an intermediate production process in relation to agriculture.

☞ SERVICES OF BUILDERS & DEVELOPERS

Notification 2/2013 w.e.f. 1st March,2013

- The value of taxable service in respect of the Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority, in serial no. 12 of notification 26/2012 amended as follows:

Particulars	Taxable Value	Abated Value
i) for residential unit having carpet area upto 2000 square feet; **or** where the amount charged is less than rupees 1 crore	25%	75%
ii) for others	30%	70%

- Vide above notification, the value of taxable service in respect of "Residential units" whose carpet area is more than 2000 sq.ft and value is above Rs.1Cr were liable to

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service tax on 30% of the value, as against in the erstwhile entry there was no such condition, taxable value being 25% for all residential units.

Notification 9/2013 w.e.f. 8th May,2013

- The value of taxable service in respect of the construction of Residential Complex was further amended whereby the taxable value was 25% only when a residential unit satisfies both the following conditions, namely:–
  (i) the carpet area of the unit is less than 2000 square feet; **and**
  (ii) the amount charged for the unit is less than rupees 1 crore .

- To sum up, the value of abatement & taxable value in case of services provided by builders/developers in respect of construction of residential construction / commercial construction is as follows:

Type of Construction	Period	Condition with respect to		Abatement	Taxable Value
		Area	Value		
RESIDENTIAL	1st July,2010 to 28th Feb.,2013	NIL	NIL	75%	25%
	1st March,2013 to 7th May,2013	Upto 2000 sq.ft	NIL	75%	25%
		NIL	Less than to Rs.1 Crore	75%	25%
		More than or equal to 2000sq.ft	More than or equal to Rs.1 Crore	70%	30%
	8th May,2013 onwards	Less than 2000 sq.ft	Less than to Rs.1 Crore	75%	25%
COMMERCIAL	1st July,2010 to 28th Feb.,2013	NIL	NIL	75%	25%
	From 1st March,2013	NIL	NIL	70%	30%

Work completed prior to 1st July,2010

Trade notice no. 14/2013-14/ST-I dated 5th December,2013, Commissionerate of Mumbai, Service Tax –I

- In response to the clarifications sought by the construction industry, the Mumbai Commissionerate-I clarified that in respect of partially completed buildings as on 1st July,2010 for which payments/consideration was received from prospective buyers after the levy was introduced i.e. after 1st July,2010, would be leviable to service tax. The payment by the prospective buyer would be treated as payment towards services to be provided by builder since the prospective buyer would enjoy the said services provided by the builder including the portion of building already constructed as on 1st July,2010, on completion. The said clarification sought to levy tax retrospectively in case of partially completed buildings.

- The levy was introduced with prospectively w.e.f. 1st July,2010. Hence, the construction of building upto 30th June,2010 was not liable to tax in the hands of the Builder/ Developer.

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- **Hon'ble Delhi CESTAT in the case of M/s Krishna Homes Vs CCE, Bhopal & in the case of CCE, Bhopal Vs. Raj Homes (2014) TIOL 402** has held that the explanation to section 65(105)(zzzh) in respect of construction of residential complex, is effective only w.e.f. 1st July,2010. The explanation widens the scope of the taxable services which is an prospective amendment.
  Further the presumption u/s 12B of the CE Act,1944 is a rebuttable presumption and when an assessee shows invoices issued by him in support of the refund claim, that no amount representing service tax has been charged from his customers, the question of unjust enrichment does not arise. The burden shifts on the department to produce evidence that incidence of tax is passed on to the customers.

- The above decision is relied upon the verdict of the **Delhi CESTAT in the case of CCE, Chandigarh Vs U.B. Construction Pvt Ltd (2013) 32 STR 738** wherein it is held that there is no tax liability on the assessee to remit tax on the construction activity for the period prior to 1st July,2010 , when the explanation was not yet appended to section 65(105)(zzzh).

- **Hon'ble Gujarat High Court in the case of CCE, Vadodara-II Vs Schott Glass India Pvt. Ltd. (2009) 14 STR 146** has held that service tax is not payable on any service which is rendered prior to the said service being notified for Service Tax even in cases where the invoices are raised and payments are made subsequent to the service being made taxable, since taxable event had already occurred and raising of invoices and/or making of payment cannot be considered to be a taxable event.

- Similar view is taken by various courts:
  - **Hon'ble Ahmedabad CESTAT in the case of Reliance Industries Ltd. Vs CCE, Rajkot (2008) TIOL 283**
  - **Hon'ble Delhi CESTAT in the case of CCE, Allahabad Vs. Ashok Singh Academy (2009) TIOL 1737**
  - **Hon'ble Delhi CESTAT in the case of CCE, Bhopal Vs. M/s Siemens Ltd (2006) TIOL 290**

<u>Maintenance Charges collected by Builder/Developer</u>

- **Hon'ble Mumbai CESTAT in the case of Kumar Beheray Rathi & Others V/s. CCE, Pune-III (2013) TIOL 1806 wherein the Hon'ble CESTAT has held that** Builders/Developersare not liable to pay Service Tax under the category 'Maintenance or Repair services' on the "one-time maintenance charges" collected from flat buyers since builders/developers are not in the business of maintenance or repair service or management of immovable property. They are collecting one-time maintenance charges from their buyers to whom they have sold flats. They are only paying on behalf of various buyers of flats to various authorities (Municipal Corporation, Revenue authorities etc.) and various service providers (such as security agency, cleaning service providers etc.) and they are not charging anything on their own. The payments are made on cost basis and the same is debited from the deposit account. They act only as trustee or as pure agent. When the co-operative society is formed even the deposit account is shifted to Flat Owner's Co-operative Society. This is a statutory obligation on the appellants in terms of Sections 5 & 6 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, sale,

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management and transfer) Act, 1963. Builders/Developers cannot be held as provider of maintenance or repair service.

☞ EDUCATION SERVICES

Notification 3/2013 w.e.f. 1st April,2013

- The exemption vide entry no. 9 of mega exemption notification 25/2012 is amended & now restricted only to services "provided to" educational institution in respect of education exempted from service tax by way of :
    a) Auxiliary education services; or
    b) Renting of immovable property services.

- The erstwhile Entry provided exemption to above said services provided **to or by** educational institution which is now restricted only to services provided to educational institutions.

CBEC Circular No.172/7/2013-ST dated 19th September,2013

- It clarified that by virtue of entry (l) in the Negative List U/s.66D & Sr. No.9 of Mega Exemption Notification No.25/2012-ST dated 20th June,2012, all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification. In addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services, canteen, etc.

- **Hon'ble Delhi CESTAT in the case of Cerebral Learning Solutions Pvt Ltd Vs. CCE (2013) 32- STR- 379** held that when the assessee had furnished documentary proof indicating a separate value for the course materials & text books supplied by it during the coaching/training imparted by it, the benefit of notification 12/2003 in respect of the value of goods was allowed to assessee. Circular No. 59/8/2003 –ST providing that exemption is available only in respect of priced standard textbooks is misconceived, clearly illegal & contrary to the statutory exemption notification.
  The above decision is relied on the case of **Chate Coaching Classes Pvt Ltd Vs. CCE 2012 taxmann.com 160 – Mumbai CESTAT**

  Implications in the negative regime: The above decision may not hold good in the present regime of law since there is no such exemption granted for the value of materials/goods sold during the provision of service.

☞ RESTAURANT SERVICES

Notification 3/2013 w.e.f. 1st April,2013

- The exemption vide entry no. 19 of mega exemption notification 25/2012 is amended & now restricted only to 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 air-conditioning or central air-heating in any part of the establishment, at any time during the year.

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- The said Entry is amended to omit the 2nd condition i.e. license to serve alcoholic beverages.

- The levy of service tax on restaurants, eating joints or mess is extended to all such entities having facility of air-conditioning or central air heating in any part of the establishment, **whether or not** having license to serve alcoholic beverages.

CBEC Circular No.173/8/2013-ST dated 7th October,2013

- It clarified the following issues in respect of services provided by restaurant operators
    - In a complex, if there is more than one restaurant, which are clearly demarcated and separately named but food is sourced from a common kitchen, only the service provided in the specified restaurant is liable to service tax and service provided in a non air-conditioned or non centrally air- heated restaurant will not be liable to service tax. In such cases, service provided in the non air-conditioned / non-centrally air-heated restaurant will be treated as exempted service and credit entitlement will be as per the CENVAT Credit Rules,2004.
    - Services provided by restaurants in other areas e.g. swimming pool or an open area attached to the restaurant are liable to service tax.
    - If goods are sold across the counter on MRP basis (fixed under the Legal Metrology Act) they have to be excluded from total amount for the determination of value of service portion.

- **Hon'ble Kerala High Court in the case of Kerala Classified Hotels & Resorts Association & Others Vs. UOI & Others 2013 TIOL 533** has held that restaurant services and short term accommodation services are beyond the legislative competence of the Parliament , as the same are subject to state levy in view of Entry 54 &62 of the State list respectively. The payments of service tax being made are entitled for refund of the same.

☞ CLUB & ASSOCIATION SERVICES

CBEC Circular No. 175/01/2014 –ST dated 10th January,2014

- It clarified on the various issues related to the scope of the exemption granted to Resident Welfare Associations (RWAs) under the negative list approach as provided under Entry No.28(c) of Mega Exemption Notification No.25/2012-ST dated 20th June,2012.

    - If per month contribution of any member of a RWA exceeds Rs.5,000/-, the entire contribution of such member would be ineligible for the exemption under the said notification.

    - Threshold exemption of Rs.10 Lacs under notification No. 33/2012-ST is applicable to a RWA, subject to conditions prescribed in the notification. As per Explanation B of the notification, the definition of "aggregate value" does not include the value of services which are exempt from service tax.

    - Where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available.

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- However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in these transactions, the exclusion from the value of taxable service would not be available.

- RWA may avail CENVAT credit and use the same for payment of service tax, in accordance with the Cenvat Credit Rules.

- **Hon'ble Gujarat High Court in the case of Sports Club of Gujarat Vs UOI & others 2013 TIOL 528** held that service provided by club to its members, is not a service by one legal entity to another & hence not liable to service tax, on the principles of mutuality. While dealing with its own members, club cannot be treated as a separate & distinct person even though incorporated as a company.
  The above decision is relied on the case of **Jharkhand High Court in the case of Ranchi Club Ltd Vs. CCE 2012 TIOL 1031**

☞ SERVICES RECEIVED BY A UNIT LOCATED IN SEZ

- **Notification No.12/2003** in supersession of notification 40/2012, w.e.f. 1st July,2013 provides for the exemption on the levy of service tax on the services received by a unit located in Special Economic Zone or a developer of SEZ and used for the authorized operation by following manner:
  a) Where the specified services are received by the SEZ Unit or the Developer are used exclusively for the authorized operations, the person liable to pay service tax has the option not to pay the service tax *ab initio,* subject to the conditions and procedure as stated below:
     - The SEZ unit / developer shall get an approval by the Approval Committee of the list of the services as are required for the authorized operations

     - The SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of above specified services

     - An authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2

     - The SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

     - The SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax

  b) Where the specified services are received by the SEZ Unit or the Developer are **not** used exclusively for the authorized operations or the specified services on which *ab-*

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initio exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely:-

- The service tax on the **common services** used for the authorized operations in SEZ & the operation in Domestic Tariff Area (DTA), shall be distributed amongst the SEZ unit & DTA unit in the manner as prescribed in Rule 7 of Cenvat Crredit Rules (i.e. in case of Input Service Distributor).

- The SEZ Unit or the Developer shall be entitled to refund of the service tax paid on the above specified services on which *ab-initio* exemption is admissible but not claimed, and the amount distributed to it as calculated above.

- The SEZ Unit or Developer, who is a registered assessee under CE Act,1944, shall file the claim for refund to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, the as the case may be, in Form A-4;

- The amount indicated in the invoice, bill or, as the case may be, challan, on the basis of which this refund is being claimed, including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon, or as the case may be, the amount of service tax payable under reverse charge shall have been paid under the provisions of the said Act;

- The claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

- The SEZ Unit or the Developer shall submit only one claim of refund under this notification for every quarter….which means a period of three consecutive months with the first quarter beginning from 1st April of every year and so on.

- The SEZ Unit or the Developer who is not so registered under the provisions of CE Act,1944, shall, before filing a claim for refund under this notification, make an application for registration under rule 4 of the Service Tax Rules, 1994

The SEZ Unit or Developer, who intends to avail exemption or refund under this notification, shall maintain proper account of receipt and use of the specified services, on which exemption or refund is claimed, for authorized operations in the SEZ.

- Vide **Notification No.15/2003** it is provided that the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax, by **30th of the month following the particular quarter.** For the quarter of July, 2013 to September, 2013, the said statement shall be furnished by the 15th of December, 2013."

☞ VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME

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- A new scheme namely "Service Tax Voluntary Compliance Encouragement Scheme,2013" was introduced to encourage voluntary compliance by the defaulters to return to the tax-fold. Accordingly, Service Tax Voluntary Compliance Encouragement Scheme Rules, 2013 were notified by Notification No.10/2013-ST dated 13th May,2013.

- Various issues under the scheme were clarified by the following circulars during the year 2013- 14:
    - Circular No.169/4/2013-ST dated 13th May,2013
    - Circular No. 170/5/2013-ST dated 8th August,2013
    - Circular No. 174/9/2013-ST dated 25th November, 2013
    - Circular No.176/02/2014-ST dated 20th January,2014
    - CBEC vide Letter F.No.B1/19/2013-TRU (PT.) dated 11th December,2013

- The few important clarifications & judicial pronouncements relating to processing of the applications under VCES scheme and its implications are discussed herein below:

- The designated authority shall ensure that no declaration is returned citing the reasons that the same is incomplete. In all cases, declaration should be promptly received and duly acknowledged. Request for clarification should be dealt with promptly. Defects in the application, if any, should be explained to the declarant and possible assistance be provided in rectifying these defects. The effort must be to accept a declaration, as far as possible, and recover the arrears of tax. (Circular No.176/02/2014)

- The conditions prescribed U/s.106(2) for rejection of declaration may be construed strictly and narrowly. The concerned Commissioner may ensure that no declaration is rejected on frivolous grounds or by taking a wider interpretation of the conditions enumerated in section 106(2). If the issue or the period of inquiry, investigation or audit is identifiable from summons or any other document, the declaration in respect of such period or issue alone will be liable for rejection under the said provision. (Circular No.176/02/2014)

- The designated authority, if he has reasons to believe that the declaration is covered by section 106(2), shall give a notice of intention to reject the declaration within 30 days of the date of filing of the declaration stating such reasons to reject the declaration. Commissioners should ensure that this time line is followed scrupulously. (Circular No.176/02/2014)

- In cases where documents like Balance Sheet, Profit and Loss Account etc. are called for by department in the inquiries of roving nature, while quoting authority of Section 14 of the Central Excise Act in a routine manner, the designated authority/ Commissioner concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the inquiry is of roving nature or whether the provisions of section 106 (2) are attracted in such cases. (Circular No.176/02/2014)

- A declaration of VCES made U/s. 107 (1) of Finance Act, 2013 shall become conclusive only upon issuance of acknowledgement of discharge under Section 107 (7). Accordingly, CBEC has advised all the Chief Commissioners to ensure that the discharge certificate is issued promptly & not later than the stipulated period of 7 days from the date of furnishing the details of payment of the tax dues in full, along with interest, if any. CBEC

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further clarified that the eligibility of CENVAT credit of "tax dues paid" would be governed by the CENVAT Credit Rules, 2004. (Circular No.176/02/2014)

- CBEC vide circular no.170/5/2013 ST-dated 8th August,2013, in serial no.13 clarified that the VCES scheme do not provide a statutory provision to file an appeal against the order for rejection of declaration passed by the designated authority u/s 106(2) of the Finance Act,2013.

- **Hon'ble Punjab & Haryana High Court in the case of Barnala Builders & Property Consultants Vs. Dy.CCE & others 2013 TIOL 1016** held that order of rejection passed by the designated authority is an appealable order u/s 86 of the Finance Act, 1994. The scheme is part & parcel of the aforesaid Finance Act. The clarifications / instructions by CBEC stating that such an order is not appealable is incorrect for the simple reason that after incorporation of the Service Tax Voluntary Compliance Encouragement Scheme into the Finance Act, all other provisions of the Act except to the extent specifically excluded, apply to proceedings under the scheme. Hence, the orders passed by the Deputy Commissioner would necessarily be appealable u/s 86 & the writ petition is dismissed.

- **Hon'ble Allahabad HC in the case of M/s K Anand Caterers Vs UOI (2013) TIOL 741 HC All ST……**held that unless the VCES application is considered and decided, the proceedings u/s 87 for recovery cannot be invoked. Unless the VCES application is disposed off and the section 107 permits payments in two installments, the notice for recovery proceedings shall not be commenced. Held that the proceedings are suspended.

☞ MISCELLANEOUS

I] Mega Exemption Notification 25/2012 amended by :-

A) Notification 3/2013……. w.e.f. 1st April,2013

- The exemption under Entry No.15 in respect of "temporary transfer or permitting the use or enjoyment of copyright of cinematographic films" is restricted to "exhibition in a cinema hall or cinema theatre" only.

- Entry No.21 is amended so as to extend the exemption granted to services provided by GTA by way of transportation of following goods:
    a) Agricultural produce
    b) Foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages
    c) Chemical fertilizer and oilcakes
    d) Newspaper or magazines registered with the Registrar of Newspapers
    e) Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap
    f) defence or military equipments

- Entry No.20 is amended so as to withdraw the exemption granted to services of transportation by rail or vessel from one place in India to another of following goods:

    a) Petroleum & petroleum products falling under Chapter headings 2710 & 2711 of the 1st Schedule of CETA, 1985
    b) Postal mail or postal bags

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c) Household effects

- The definition of term "charitable activities" under clause 2(k) of the above notification 25/2012 is amended so as to omit sub clause (v) of advancement of any other object of general public utility up to the prescribed value therein.

- Entry No.24 granting exemption to "services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility" is omitted.

- Entry No.25 is amended to withdraw the exemption granted to services provided to Government, local authority or a governmental authority by way of "repair or maintenance of an aircraft"

B) Notification 14/2013……. w.e.f. 22nd October,2013

- New Entry 19A inserted whereby exemption granted to any services provided in relation to serving of food or beverages by a canteen maintained by a factory covered under Factories Act,1943, which has the facility of air-conditioning or central air-heating at any time during the year.

C) Notification 02/2014……. w.e.f. 30th January,2014

- The term government authority under clause "s" of Para 2 is now amended to mean any authority or board or any other body which is either set up by an Act of Parliament or State Legislature; or established by government; both having 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution

II] New forms ST-5 / ST-6 / ST- 7 - Notification 5/2013……. w.e.f. 1st June,2013

- Following new forms for in respect of appeal to CESTAT have been introduced ;
  - Form No.ST-5 (Appeal to Appellate Tribunal U/s.86(1)),
  - Form ST-6 (Memorandum of Cross Objection to Appellate Tribunal U/s.86(4)) &
  - Form ST-7 (Appeal to Appellate Tribunal U/s.86(2) or 86(2A)).

- **CBEC vide Circular No.969/03/2013-CX dated 11th April,2013** has issued salient features of the changes introduced in the new appeal forms which are notified vide above Notification No.5/2013-ST dated 10th April,2013 . It also clarified that the old forms may continue to be used for a period of 3 months from the date of coming into effect of the new forms, i.e. till 31st August,2013. From 1st September,2013 onwards, no appeal shall be filed in the old forms.

III] Procedure for surrender & cancellation of Service Tax Registration

- **Commissioner of Service Tax, Mumbai-I vide Trade Notice No.18/2013-ST dated 19th December,2013, in supersession of Trade Notice No.03/2007-ST dated 30th March,2007,** has issued guidelines detailing the procedure to be followed for surrender/cancellation of Service Tax registration

  ✓ Submit online application on the ACES website www.aces.gov.in

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- ✓ Submit signed copy of online application along with
  - ➢ Application form & undertaking in Annexure-I
  - ➢ Service Tax Returns filed from the date of obtaining registration till the date of surrender (maximum upto last 6 returns)
    - o In case ST-3 returns are not filed due to threshold limit, it is not necessary to file returns & the assessee can apply for waiver of Late Fees under Rule 7C for non-filing of returns…..The fact of non-filing of returns to be mentioned clearly in the undertaking.
  - ➢ Profit & Loss A/c. & Balance Sheet from the date of obtaining registration till the date of surrender (maximum upto last 3 financial years)
    - o In case Profit & Loss A/c. & Balance Sheet are not prepared, copy of IT return may be submitted
    - o If IT Returns are also not submitted, copy of bank statements may be submitted to satisfy the correctness of reason for surrender
  - ➢ Details of Show Cause Notice pending adjudicating, details of confirmed demands, details of courts cases, details of audit conducted etc. in Annexure-II.
  - ➢ Attach copy of death certificate in case of death of service provider.
  - ➢ Necessary document like Partnership Deed or MOA/AOA in case of change in constitution.
  - ➢ Order passed by Hon'ble HC in case of merger or acquisition
  - ➢ Copy of centralised registration certificate in case of surrender of decentralized registrations due to obtaining centralised registration.
  - ➢ Copy of registration certificate for which the service provider wants to continue the registration in case of multiple registrations granted due to technical errors in system.
- ✓ Failure to submit above documents within 15 days of submission of online application would result into rejection of application.
- ✓ Applications to be accepted in person between 3.00 pm to 5.00 pm in the division.
- ✓ The superintendent may require further information like reconciliation of income shown in Profit & Loss A/c. with ST-3 return….Reconciliation not required when surrender/cancellation is on account of
  - ➢ Obtaining centralised registration

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- Shifting of office from one jurisdiction to other jurisdiction
- Multiple registration due to technical errors
- Turnover below threshold limit as per Profit & Loss A/c.

✓ No requirement to submit online application for assessee who has obtained registration prior to 01/04/2010 & not migrated to ACES…..Intimation for cancellation to be sent by the department by post.

✓ Assessee to apply in Form Annexure-III for regeneration of T-pin in case of forgotten user ID or password.

✓ Assessee to be informed through email after successful cancellation of registration.

IV] Refund of CENVAT Credit to services provided under partial reverse charge

- Rule 5B of the CENVAT Credit Rules, 2004 provides for refund of unutilized CENVAT Credit to a provider of service providing services notified under Section 68(2) of the Act.

- Vide Notification No.12/2014-CE (NT) dated 3rd March,2014, CBEC has notified following procedure, safeguards, conditions and limitations.

Conditions

- Refund of unutilized CENVAT Credit of duty paid on inputs & service tax paid on input services used for rendering output services taxable under partial reverse charge namely i) renting of motor vehicle; ii) manpower supply; iii) security services & iv) works contract services

- Refund shall not exceed the amount of service tax liability paid/payable by the recipient of service under partial reverse charge for the particular half year

- Amount of refund to be debited from CENVAT account at the time of making claim

- The claimant may take back the differential amount as CENVAT Credit in case refund sanctioned is less than amount claimed.

- Only one refund claim to be submitted for every half year

- Refund claim to be filed only after half yearly Service Tax return for particular half year is filed

- No refund shall be admissible for CENVAT on inputs/input services received prior to 1st July,2012.

Procedure

- Application for refund in Form A to be submitted to jurisdictional AC/DC within 1 year from the due date of filing half yearly Service Tax return

- Refund claim for July to September,2012 to be filed before 30th June,2014

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- Claimant to submit the copies of relevant half yearly Service Tax return along with the refund claim.

- AC/DC may call for further documents in case he has reasons to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim.

V] Others

- **CBEC vide Circular No.168/3/2013-ST dated 15th April,2013** has clarified that the services provided by way of erection of pandal or shamiana would attract the levy of service tax since the activity of providing pandal and shamiana along with erection thereof and other incidental activities do not amount to transfer of right to use goods. It is a service of preparation of a place to hold a function or event. Effective possession and control over the pandal or shamiana remains with the service provider, even after the erection is complete and the specially made up space for temporary use handed over to the customer.

- Vide Notification 16/2013 w.e.f. 1st January,2014 , proviso to rule 6(2) of the Service tax Rules,1994 is amended whereby the assessee shall deposit the service tax liable to be paid by him with the designated bank of CBEC **electronically where he has paid a total service tax of Rs 1 lac including the amount paid by utilization of CENVAT credit in the preceding financial year.**

☞ RECENT JUDGEMENTS

- **Hon'ble Larger Bench of Delhi CESTAT in the case of M/s Bhayana Builders P. Ltd Vs. CST, Delhi (2013) TIOL 1331** held that value of goods and materials supplied free of cost by the service receiver to the provider of taxable construction services would be outside the taxable value or the gross amount charged. As there is no monetary or non-monetary consideration accruing to the benefits of the service provider from the service recipient when such free supplies are provided, the value of the same shall not be included in the gross amount charged by the service provider, within the meaning of later expression in section 67 of the Act.
  Further, the principles of "Nosictur a sociis" (term recognized by its associated words) shall apply while interpreting the explanation inserted in Notification 15/2004 vide Notification 4/2005. That means goods and materials "used" would mean goods and materials supplied or provided by the provider and 'used' for providing the construction service, i.e. goods and materials, the value whereof is charged to the service recipient. Hence, value of free supplies of goods and services by service recipient do not comprise the gross amount charged by the service provider.

- **Hon'ble Mumbai CESTAT in the case of Professional Couriers Vs. CCE, Mumbai (2013) 32 STR 348** held that when no separate amount of service tax is collected from the customers, the entire consideration received by the appellant has to be treated as cum-tax and the amount received should be apportioned between the assessable value and the service tax liability.

  However contrary to this, **Hon'ble Mumbai CESTAT in the case of CCE, Aurangabad Vs. Rudra Galaxy Channel Ltd - 2014 TIOL 140** held that in the absence of any documentary evidence available on record to show that the amount received by the appellant is cum-

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tax, benefit of cum-tax value cannot be granted. **The said view is relied on the decision of Hon'ble Supreme court in the case of Amrit Agro Industries Ltd (2007 –TIOL -244)** wherein it was held that unless it is shown by the assessee that the price of the goods includes the excise duty payable by him, there is no question of excluding the duty element from the price.

- **Hon'ble Mumbai CESTAT in the case of Greenwich Meridian Logistics Pvt Ltd Vs. CST, Mumbai (2013) TIOL 1206** held that booking of cargo space & trading in cargo space cannot be considered as supply sale of goods & has to be considered as supply of services. The mark up or the difference between the purchase & sale price earned by the assessee is liable under to service tax under the category of "Business Auxiliary Services" and pre deposit was ordered.

- **Hon'ble Delhi High Court in the case of Wipro Ltd Vs UOI (2013) TIOL 119** while allowing the claim for rebate under Export of Service Rules, 2005, has held that the refund claim should not be rejected on the ground that the appellants have not satisfied the condition of giving the information such as description, value, amount etc related to input services used in the services being exported, to the department before the date of export as laid down in condition 3 of Notification12/2005. The said condition is impossible to comply prior to the date of export and even the lower authorities failed to demonstrate any mechanism whereby the said condition can be fulfilled. **The condition imposed by the notification must be capable of being complied with. If it is impossible of compliance, then it has to be read down.**

- **Hon'ble Mumbai CESTAT in the case of M/s ICC Reality (India) Pvt Ltd Vs CCE, Pune (2013) TIOL 1751** held that electricity charges collected from tenants is not includible in the value of taxable service. Electricity is goods chargeable to duty under Central Excise tariff as well as under the Maharashtra Value Added Tax Act,2002 & therefore the supply of electricity to tenant amounts to sale of goods & not supply of service. Electricity charges cannot form part of taxable value in terms of notification 12/2003.

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