

E-circular dated Monday, November 16, 2015

Integrated Association of Micro, Small & Medium Enterprises of India

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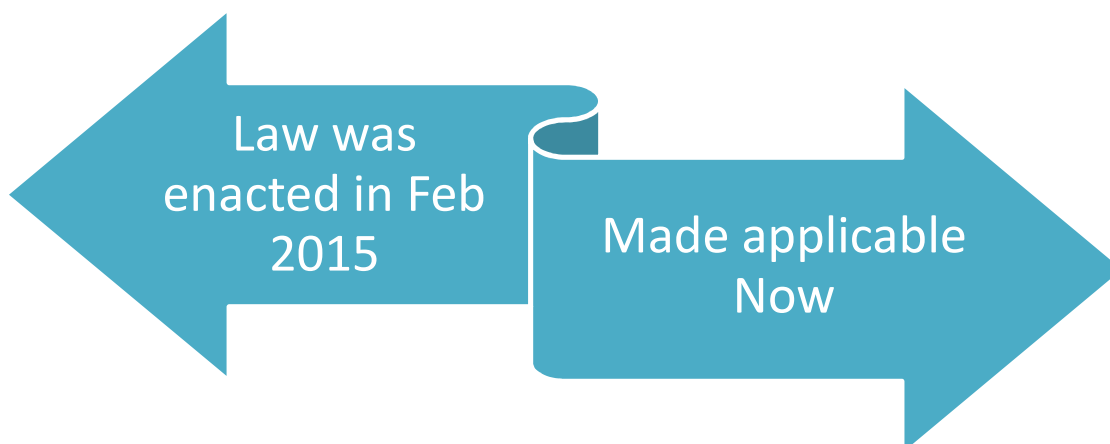


Dear Members,

Important Change of Budget 2015. It is now effective w.e.f. 15th November 2015. It will affect almost all businesses. It is procedural, but important.

Swachh Bharat Cess, at Rate of 0.5% on all Taxable Services

(Vide notification number 21/2015-ST dated November 6, 2015):



Effective rate of Service tax including SB Cess will be 14.5% from November 15, 2015.

a. In the Invoices / ERP softwares, will we show Separately ?

Answer = Yes.

SB Cess to be charged and shown separately in Invoice: SB Cess would be over and above the present 14% Service tax rate. Hence, **SB Cess needs to be charged separately on the invoice**, needs to be accounted separately in the books of account and needs to be paid separately under separate accounting head which may be notified separately.

b. Will the SB Cess be levied on “Exempted services” ?

Notification No. 22/2015-ST dated November 6, 2015 further provides that SB Cess shall not be leviable on services which are exempt from Service tax by a notification issued under Section 93(1) of the Finance Act, 1994 or otherwise not leviable to Service tax under Section 66B thereof.

Therefore, SB Cess @ 0.5% will be levied on value of all taxable services except the following:

- Negative List of Services under Section 66D of the Finance Act, 1994
- Services exempted by a notification issued under sub-section (1) of Section 93 of the Finance Act, 1994 i.e. Mega Exempted Services vide Notification No. 25/2012-ST dated June 20, 2012. And Services exempted as specified to certain extent under the Abatement Notification No. 26/2012-ST dated June 20, 2012

Source :

<http://www.cbec.gov.in/htdocs-servicetax/st-notifications/st-notifications-2015/st21-2015>

<http://www.cbec.gov.in/htdocs-servicetax/st-notifications/st-notifications-2015/st22-2015>

c. Is there any SB Cess on “Excisable Goods”

Answer = NO.

This applies to Service tax only

d. SB Cess on “Reverse Charge”

Answer = Yes, Payable.

As per normal procedure as in case of Service tax

e. SB Cess on “Works Contract”

Answer = Yes.

Computation of tax under Works contract: In terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006, tax needs to be applied on the value so arrived at the rate of 14.5%. Accordingly, effective rate of tax would be as under:

- In case of original works: 5.8% (14.5%*40%); and
- Other than original works: 10.15% (14.5%*70%)

f. SB Cess on “Restaurant / Catering ”

- In case of Restaurant services: 5.8% (14.5%*40%); and
- In case of Outdoor catering services: 8.7% (14.5%*60%)





Open issues that require immediate clarification from the Board

Following issues may crop up if no further clarification is issued,

- g. Online payment procedure ? / Challan Format etc ? Yet to be advised.
- h. Accounting head: What will be the accounting head for depositing SB Cess ?
- i. **Availability of Cenvat credit of SB Cess** in the hands of **Manufacturer or Service Provider**: Whether Cenvat credit of SB Cess would be available or not as there is no amendments proposed in the Cenvat Credit Rules, 2004 pertaining to availment of Cenvat credit of SB Cess?
- j. **Will the Exporters get any refund of the SB Cess ?** If no credit is made available, it would directly add to the cost of goods and services. In case of export of goods or services, exporter would not be entitled for refund of SB Cess.
- k. **Calculation of value of taxable services under Abatement** Notification: How SB Cess would be dealt while availing the benefit of abatements by way of an exemption provided vide Abatement Notification No. 26/2012-ST dated June 20, 2012.
Ex: , GTA services, presently, abatement of 70% is available and accordingly, Service tax is required to paid on 30% of value of taxable service after exemption (abatement) of 70% as provided under the said Abatement Notification.

Hence, question is arising , that What would be effective rate of Service Tax including SB Cess. Whether it would be leviable at 4.2% (i.e. 30% of 14%) + 0.5% = 4.7% or 30% of 14.5% = 4.35%?

As per our understanding, it should be 4.35% as taxable value after abatement i.e. 30% for GTA Service for chargeability of Service Tax and SB Cess would be SAME in terms of sub-section (5) of Section 119 of the Finance Act, 2015, which states that “the provisions of Chapter V of the Finance Act, 1994 and the rules made there under, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made there under, as the case may be.”

However, it is better that a proper clarification is issued in this regard.



d. Treatment of SB Cess on ongoing transactions: With the Service tax rate (including SB Cess) of 14.5% becoming effective from November 15, 2015, there are chances of turmoil being faced by the service provider in respect of the ongoing transactions for which either **certain advance payment is received prior to November 15, 2015** but the completion of provision of service may take place post November 15, 2015 or vice versa.

Tussle between Rule 4 of the Point of Taxation Rules, 2011 and Section 67A of the Finance Act, 1994 will again crop up but, we are of the considered view that SB Cess should be levied on value of taxable services rendered on or after November 15, 2015.

e. Implication of SB Cess on services under Rule 6 of Service Tax Rules, 1994: Implication of SB Cess while computing Service tax on services specified under Rule 6 of the Service Tax Rules, 1994 namely air travel agent, insurance premium, purchase and sale of foreign currency needs to be clarified as there is no specific exemption for such services.

For queries, suggestions and feedback , you can e-mail us

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