

## **SIGNIFICANT NOTIFICATIONS / CIRCULARS ISSUED DURING THE PERIOD 16<sup>TH</sup> September, 2013 TO 15<sup>TH</sup> October, 2013**

### **A. SERVICE TAX**

#### **1. Arrest and Bail under Service Tax : CBEC issues Guidelines**

CBEC vide *Circular No. 171/6/2013-ST dated 17.09.2013* has provided the guidelines for arrest and bail in relation to section 90 and 91 of the Finance Act, 1994 as amended by Finance Act, 2013. The Circular lays down that since arrest impinges on the personal liberty of an individual, this power must be exercised carefully. The officers have been instructed to strictly adhere to the legal stipulations contained in section 91 read with section 89 of the Finance Act, 1994. The Circular specifies that to authorise the arrest, the Commissioner should have reason to believe and the same must be based on credible material which will stand judicial scrutiny.

The Circular also stresses upon the need to ensure proper investigation, prevention of the possibility of tampering with evidence or intimidating or influencing witnesses before deciding to arrest a person.

Detailed guidelines in relation to procedure for arrest , post arrest formalities and reporting system have been set out in the Circular.

*(Circular No. 171/6/2013-ST dated 17.09.2013)*

#### **2. Ad-hoc exemption for taxable services provided in the State of Uttarakhand**

CBEC vide ad hoc exemption *Order No. 1/1/2013, dated 17.09.2013* has exempted the following taxable services provided to any person during the period between 17th September, 2013 to 31st March, 2014 in the State of Uttarakhand :

- a. Services by way of renting of a room in a hotel, inn, guest house, club, campsite or other commercial place meant for residential or lodging purposes;
- b. Services provided in relation to serving of food or beverages by a restaurant, eating joint or mess.

*(Ad hoc exemption Order No. 1/1/2013, dated 17.09.2013)*

#### **3. Auxiliary educational services- Clarified**

"Services provided to an educational institution in respect of education has been exempted by mega exemption *Notification No. 25/2012-ST dated 20.06.2012* from service tax, by way of, -

- (a) Auxiliary educational services; or
- (b) Renting of immovable property;

"auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

CBEC Vide *Circular no. 172/7 /2013-ST, date 19.09.2013* has clarified that all services relating to education are exempt from service tax and that there are many "auxiliary educational 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 mega exemption notification.

Circular also enlists certain other examples for auxiliary educational services namely, hostels, housekeeping, security services, canteen, etc.

*(Circular no. 172/7 /2013-ST, date 19.09.2013)*

#### 4. Clarification on Restaurant Services

Finance Act, 2013 had enhanced the scope of taxability of services provided by a restaurant, eating joint or a mess in relation to serving of food or beverages by which all restaurants with air-conditioning or central air heating (including restaurants not serving liquor as well) in any part of the establishment at any time during the year became liable to service tax.

CBCE has clarified the following issues in relation to such service:

1. In a complex where air conditioned as well as non-air conditioned restaurants are operational but food is sourced from the common kitchen, will service tax arise in the non-air conditioned restaurant?

**Clarification** : Services provided in relation to serving of food or beverages by a restaurant, eating joint or mess, having the facility of air conditioning or central air heating in any part of the establishment, at any time during the year (hereinafter referred as "specified restaurant") attracts service tax.

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.

2. In a hotel, if services are provided by a specified restaurant in *other areas e.g. swimming pool or an open area* attached to the restaurant, will service tax arise?

**Clarification:** Yes. Services provided by specified restaurant in other areas of the hotel are liable to service tax.

3. Whether service tax is leviable on goods sold on MRP basis across the counter as part of the Bill/invoice.

**Clarification:** If goods are sold 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.

*(Circular No. 173/8/2013-ST dated 7.10.2013)*

## **B. Excise**

### **1. Arrest and Bail under Central Excise: CBEC issues Guidelines**

CBEC vide *Circular No. 974/08/2013-CX dated 17.09.2013* has issued clarification to prescribe the guidelines for non-bailable offences ( covered under clause (b) or clause (bbb) of sub section 9(1) and duty involvement exceed Rs.50 Lacs ), where decision to arrest may be taken by the Commissioner as under :

- (a) clandestine removal of manufactured goods;
- (b) removal of goods without declaring the correct assessable value and receiving a portion of sale price in cash which is in excess of invoice price and not accounted for in the books of account;
- (c) taking Cenvat Credit without the receiving the goods specified in the invoice;
- (d) taking Cenvat Credit on fake invoices;
- (e) Issuing Cenvatable invoices without delivering the goods specified in the said invoice.

However, all other cases of cognizable and non-bailable offences, not referred above, the decision to arrest shall be taken by the Commissioner only with the approval of the jurisdictional Chief Commissioner. Examples of such cases are :

- (a) removal of inputs as such, without reflecting such removal in records, on which Cenvat credit has been taken, without payment of amount equal to the credit availed on such inputs
- (b) irregular and wrongful availment of benefit of central excise duty exemption by reason of fraud, collusion, willful misstatement, suppression of facts, or contravention of the provisions of the Act or the rules with intent to evade payment of duty, etc

*Detailed guidelines in relation to procedure for arrest , post arrest formalities and reporting system have been set out in the Circular.*

*(Circular No. 974/08/2013-CX dated 17.09.2013)*

## **C. Customs**

### **1. Arrest and Bail under Customs : CBEC issues Guidelines**

CBEC vide *Circular No. 38/2013-Cust dated 17.09.2013* has clarified that arrest in respect of an offence, categorized as bailable offence, should be effected only in exceptional situations which may include :

- (a) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods exceeds Rs. 20 lakh.
- (b) In a case related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods exceeds Rs. 50 lakh.

*Detailed guidelines in relation to procedure for arrest , post arrest formalities and reporting system have been set out in the Circular.*

*(Circular No. 38/2013-Cust dated 17.09.2013)*

*The text of the above notifications/ circular is available at [www.cbec.gov.in](http://www.cbec.gov.in)*