

# ***Overview of Service Tax Negative List & Mega Exemption***

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# TAXATION OF SERVICES – NEGATIVE LIST



Restoration of [Service](#) Specific Accounting codes for Registration & Payment of Service Tax

# Taxable Event - Service Tax

- S. 66 of Finance Act → There shall be levied a tax on the Value of taxable services referred to in various sub-clauses of (105) of S.65 and collected in such manner as may be prescribed
- S. 65(105) → Any Service provided or *to be provided* (16-6-2005)
- S. 65B (51) → Taxable service means any service on which service tax is leviable under section 66B;
- **S. 66B** → There shall be levied a 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
- ***Association of Leasing & Financial Service Companies vs. UOI 2010 (20) STR 417 SC*** → Taxable Event → Rendering of Service

# Definition of Service

- S. 65B (44) → “Service” means Any Activity carried out by a Person for another for Consideration, and includes a Declared service, but shall not include—
  - (a) an activity which constitutes merely,-
    - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
    - (ii) such transfer, delivery or supply of any goods which is deemed to be sale within Article 366 (29A) of the Constitution; or
    - (iii) a transaction in money or actionable claim;
  - *(b) a provision of service by an employee to the employer in the course of or in relation to his employment; - Employer-Employee / Secondment/ Jt Employment/ Director*
  - (c) fees taken in any Court or tribunal established under any law for the time being in force.

# Declared Services – S 66E

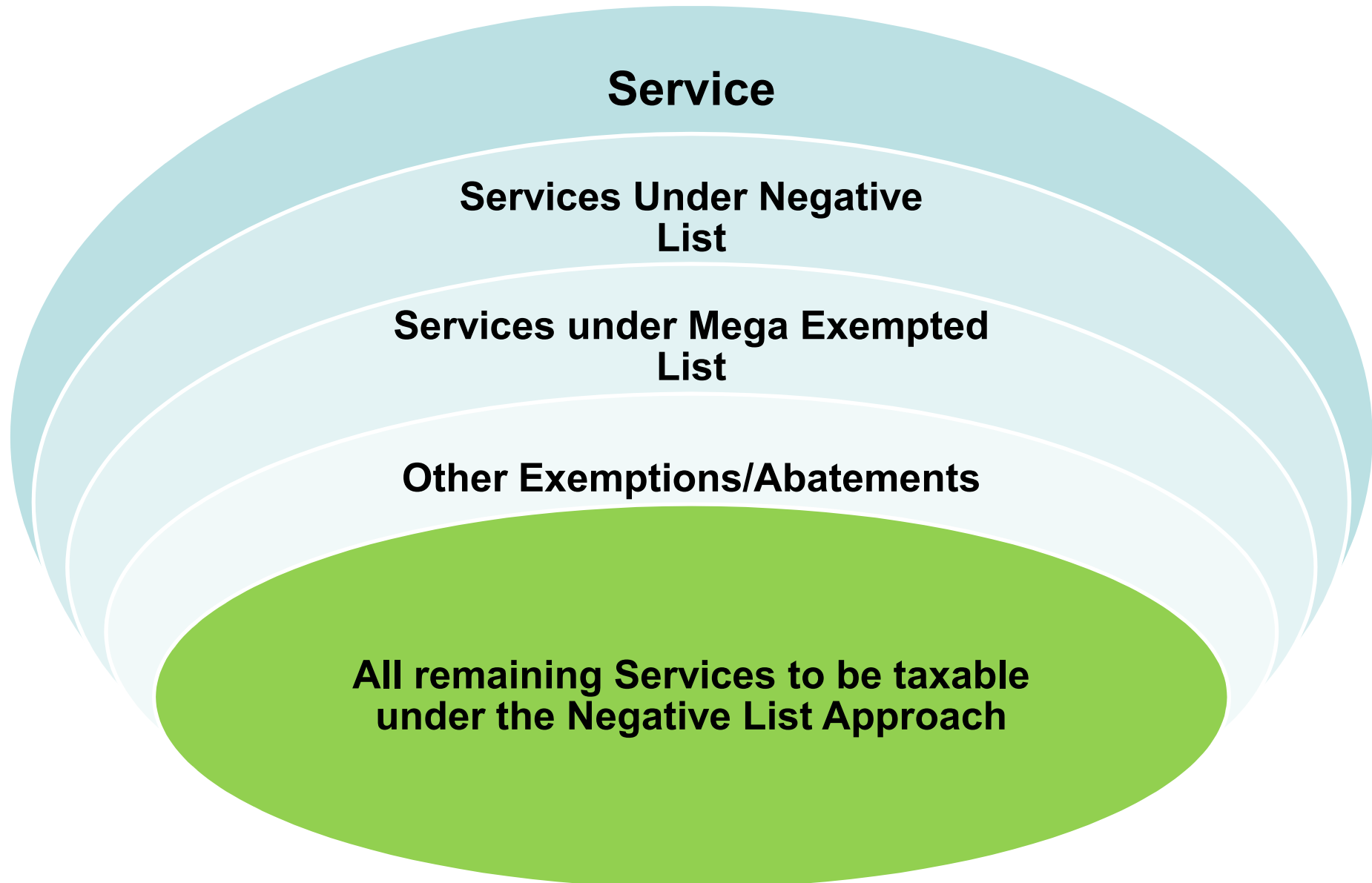
9 Activities declared to be amounting to services:

- Renting of Immovable Property (Entry 49 – List II)
- b. Construction of a complex, building, civil structure for which consideration received before issuance of completion certificate (En 49)*
- Temporary Transfer/Permitting Use or Enjoyment of Intellectual Property Rights {IPR -10/9/2004}
- Development, Design, Implementation etc. of Information Technology Software {IT Software Services – 16/5/2008}
- Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- Transfer of goods by way of hiring/ leasing/ licensing without transfer of right to use such goods {16/5/2008}
- Activity in relation to delivery of goods on hire purchase/ any system of payment by instalments
- h. Service portion in the execution of a works contract {A -366 (29A)}*
- Service portion in an activity involving supply of food/drinks/article of human consumption {A -366 (29A)}

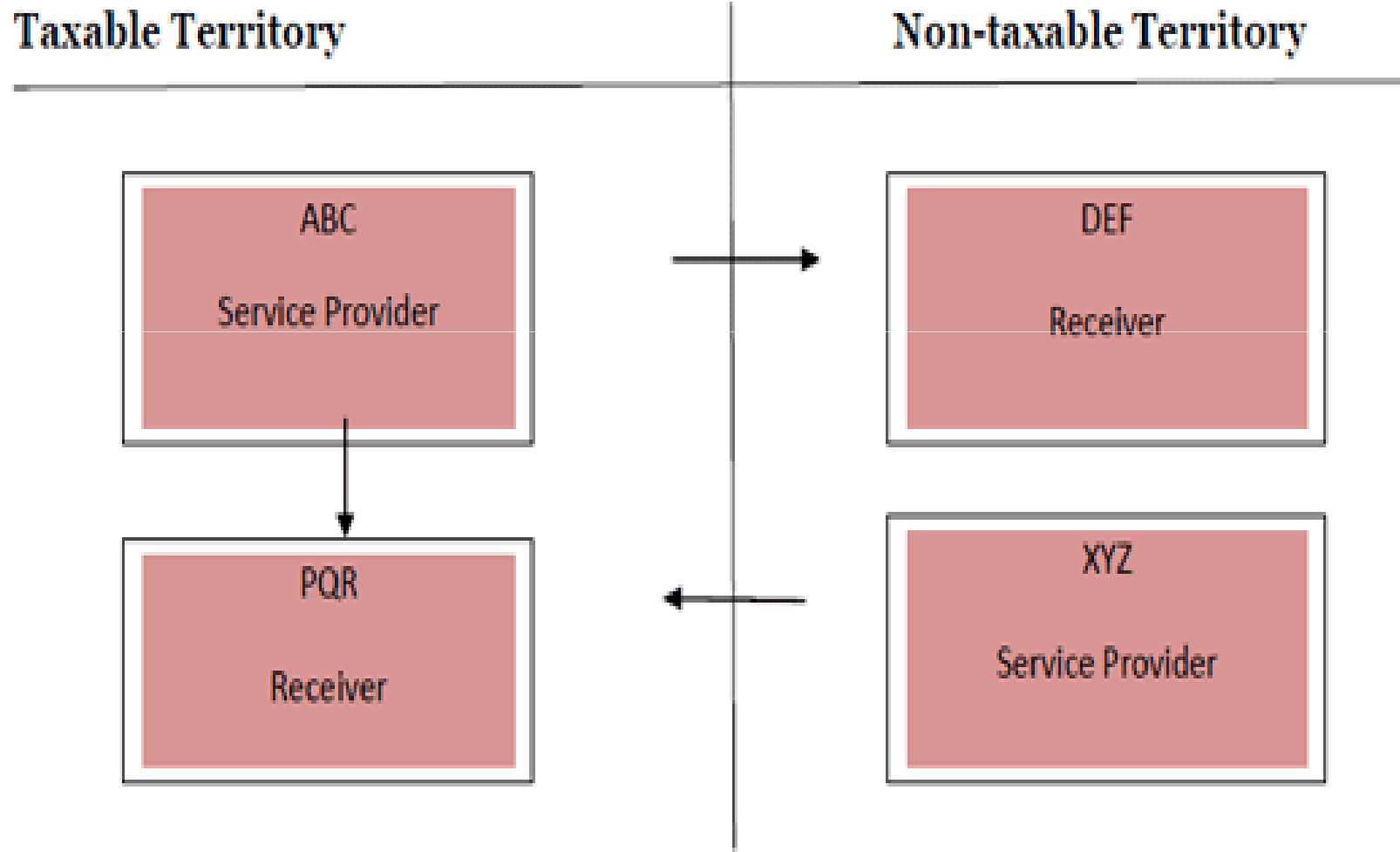
# Definition of Service

- **Explanation 1.**— Nothing contained in this clause shall apply to functions performed by MP, MLA, Other Govt. Officers or Govt. Bodies.
- **Explanation 2.**- For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.
- **Explanation 3.**- For the purposes of this Chapter,-
  - (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;*
  - (b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.*
- **Explanation 4.**- *A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;*

# TAXATION OF SERVICES – NEGATIVE LIST



# Obligation & POT





# Service – Service Tax

- Activity – Economic
- Person – 65B (37) → Service Provider – Service Recipient
- Consideration – S. 67/ Determination of Valuation Rules
  - Monetary – Free Gift/ Charities/ Grant
  - Non-Monetary: Kind
  - Barter
  - Advance – Services / Goods
  - Deposit - Refundable/ Non- refundable
  - Demurrage/ Accidental Damage – Penalty
  - Late Payment - Interest
  - Short received – Deficiency of Services
  - Bad Debts

# TAXATION OF SERVICES – NEGATIVE LIST

- Restoration of Service specific accounting codes for payment of Service tax & Registration (Circular No. 165/16/2012-ST dated. 20-11-2012)
- List of 120 services provided with Accounting Codes
- If Registration obtained under Positive list approach - Service specific accounting codes continue
- Where registrations obtained/ amended under 'All Taxable Services', the taxpayer should file amendment application online in ACES and opt for relevant description(s) from the list of 120 descriptions of services provided
- New tax payers may register by selecting the relevant descriptions from among list of 120 services provided

# POSITIVE VS NEGATIVE LIST -DISPUTE

- **Manpower Recruitment & Supply Agency Services**  
S.65(105)(k): Any Service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;
- **Supply of Manpower R.2(1)(g):** Supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control. (***Manpower Recruitment/ Piece Rate/ Hourly Rate basis/ Cleaning Services***)

# Changes in Finance Bill, 2013

## **Negative List of Services Under Section 66D**

# Changes in Negative List

- **S. 66D(d)(i) modified by deleting the word “Seed”**  
→ **All testing w.r.t to agriculture and agricultural produce under Negative List**  
*(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;*
- ***Comment: What happen for past period/ Whether Rice, etc. covered under Agricultural Produce***

# Changes in Negative List

- **“Process amounting to manufacture or production” in S. 65B(40) expanded →**  
*“Process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force”*
- ***Comment: Impact of Exempt Service/ No benefit for past period***

# Changes in Negative List

- **S. 66D(I)→ Pre-School & Higher Secondary/ Certified courses recognized by Law/ Approved Vocational course - S. 65B (11) →**
  - (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or*
- **Comment: No benefits for past period**

# Negative List of Services

- **S. 66D: Comprises of *following Services* - 17 Services**
  - Services by Govt. or Local Authority except Sp. Services
  - Services by RBI
  - Services by foreign diplomatic mission located in India
  - Services relating to Agriculture or Agriculture Produce
  - *Trading of goods*
  - *Any process amounting to manufacture or production of goods (Is it Exempted Service)*
  - 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



# MANUFACTURE VS. SERVICE

## **4.6.1 Would service tax be leviable on processes which do not amount to manufacture or production of goods?**

Yes. Service tax would be levied on processes, unless otherwise specified in the negative list, not amounting to manufacture or production of goods carried out by a person for another for consideration. Some of such services relating to processes not amounting to manufacture are exempt as specified in entry no. 30 of Exhibit A3.

## **4.6.2 Would service tax be leviable on processes on which Central Excise Duty is leviable under the Central Excise Act, 1944 but are otherwise exempted?**

No. If Central Excise duty is leviable on a particular process, as the same amounts to manufacture, then such process would be covered in the negative list even if there is a central excise duty exemption for such process. However if central excise duty is wrongly paid on a certain process which does not amount to manufacture, with or without an intended benefit, it will not save the process on this ground.

## Cenvat Credit – Exempted Service –R 2(e)

- i. Taxable service which is **exempt** from the whole of the service tax leviable thereon; or
- ii. Service, on which **no service tax is leviable** under section 66B of the Finance Act; or
- iii. Taxable Service whose part of value is exempted on **condition that no credit of inputs and input services**, used for providing such taxable service, shall be taken;

But shall not include a service which is exported in terms of Rule 6A of the Service Tax Rules, 1994.

- **Rule 6 of CCR applicable for Reversal of Cenvat credit for exempted Service**

# Negative List of Services

- Betting, gambling or lottery;
- Admission to entertainment events or access to amusement facilities;
- Transmission or distribution of electricity by an electricity transmission or distribution utility;
- Service relating to preschool education including higher and secondary education, Approved vocational education course and qualification recognized by any law;
- Services by way of renting of residential dwelling for use as residence;

# Negative List of Services

- Services by way of deposit, loans or advance or sale or purchase of foreign currency;
- Service of transportation of passengers by specified service providers – Stage Carriage/ Rly except First class or AC, Metro, public Transport, etc.;
- Service by way of transportation of goods by Road except GTA/ Courier .....;
- Funeral, burial, crematorium or mortuary services including transportation of the deceased.

Notification No. 3/2013-ST dated  
1-3-2013 effective from April 1, 2013

# Mega Exemption – Education Institutions

Under S. no. 9 - Exemption **by** way of auxiliary educational services and renting of immovable property provided by specified educational institutes will not be available

Services provided to ~~or by~~ an educational institution in respect of education exempted 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;*

**Comment: Specified education still exempted from Service Tax  
[Section 66D(I)]**

# Mega Exemption – Cinematographic films

**Under S. No. 15 - Benefit of exemption in relation to copyrights for cinematograph films will now be available only to films exhibited in a cinema hall or theatre**

- *“Temporary transfer or permitting the use or enjoyment of a copyright:*
  - *covered under clauses (a) ~~or (b)~~ of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or*
  - *of cinematograph films **for exhibition in a cinema hall or cinema theatre;”***

**Comment: Cinematographic films exhibited on TV, Internet, etc. not exempt**

# ***Mega Exemption – AC Restaurants***

**Under S. No 19 - Exemption will now be available only to non-air-conditioned or non-centrally air-heated restaurants; the dual requirement earlier that it should have air-conditioner and license to serve alcohol is being done away with; - Rule 2C - 40% (No Cenvat on Input)**

## **CERTAIN CLARIFICATIONS -CIRCULAR NO. 173/8/2013-ST DT.07-10-2013:**

**Q** 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?

**Reply** If restaurants clearly demarcated and separately named.  
No ST -- on Service provided in a non air-conditioned or non centrally air- heated restaurant. Treat it as exempted service.



# ***Mega Exemption – AC Restaurants***

## **CERTAIN CLARIFICATIONS -CIRCULAR NO. 173/8/2013-ST Dated 07-10-2013 (continued):**

Q 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?

Reply Service Tax Applicable.

Q Is Service Tax leviable on goods sold on MRP basis across the counter as part of the Bill/invoice

Reply No Service Tax Applicable, if goods sold on MRP basis (fixed under the Legal Metrology Act).

# ***Mega Exemption – Railways***

**Under S. No. 20 – Earlier exemptions withdrawn of Services by way of transportation by rail or a vessel from one place in India to another of the following goods -**

- ~~(a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);~~
- (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (c) defence or military equipments;
- ~~(d) postal mail or mail bags;~~
- ~~(e) household effects;~~
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) railway equipments or materials;
- (h) agricultural produce;
- (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
- (j) chemical fertilizer and oilcakes

# ***Mega Exemption – GTA***

## **Under S. No. 21 - Services provided by GTA**

(a) agricultural produce; (b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees; (c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty; (d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; (e) chemical fertilizer and oilcakes; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (h) defence or military equipments;

**Earlier:** (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage; Clause (b) and (c) above

# ***Mega Exemption – Others***

**Under S. No. 24 - The exemptions for vehicle parking to general public are being withdrawn.**

**Under S. No 25 - Exemption for repair or maintenance service provided to Government, a local authority or a governmental authority of aircrafts are being withdrawn but for vessel, exemption will continue.**

**The definition of “charitable activities” is being changed by deleting the portion listed in sub-clause (v) of clause (k). Thus the benefit to charities providing services for advancement of “any other object of general public utility” up to Rs. 25 Lakh will not be available. However the threshold exemption will continue to be available up to Rs 10 lakh.**



Notification No.13/2013-ST dated  
10-09-2013

# ***New entry inserted in Mega Exemption***

*“9A. Any services provided by-*

- (i) the NSDC set up by the GOI;*
- (ii) a Sector Skill Council approved by the NSDC;*
- (iii) an assessment agency approved by the Sector Skill Council or the NSDC;*
- (iv) a training partner approved by the NSDC or the Sector Skill Council*

*in relation to (a) the National Skill Development Programme implemented by the NSDC; or (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (c) any other Scheme implemented by the NSDC”*

*Where NSDC stands for National Skill Development Corporation*



Notification No. 14/2013-ST dated  
22-10-2013

## ***New entry inserted in Mega Exemption***

*“19A. Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year.”*



# Changes in Budget 2014

- **Exemption on loading, unloading, packing, handling, storage or warehousing of Rice:**
- The definition of 'Agricultural produce' in section 65B(5) of the Finance Act, 1994, leads to a differential treatment between paddy and rice. Paddy is covered by the definition of agricultural produce which loses its essential characteristic after milling into rice.
- Inserted Entry No. 40 in Mega Exemption Notification vide Notification No.4/2014-ST dated 17th February 2014].

# Changes in Budget 2014

- **Exemption on transportation of Rice** by rail or a vessel or by a Goods Transport Agency by way of transport in a goods carriage, exempted vide Sl. Nos. 20(i) and 21(d) of the Mega Exemption Notification
- Clarification issued vide Circular No. 177/3/2014 dated 17th February 2014 that “food stuff” includes rice.
- **Exemption on milling of Rice:** Para 1.2 of the Circular clarifies that milling of paddy into rice carried out as job work is covered by the exemption at Sl. No.30 of the Mega Exemption Notification since such milling of paddy into rice is an intermediate production process

# Service Tax – Exemption

- **Mega Exemption** → Notification No. 25/2012-ST dated. 20-6-2012, duly amended as on date → 42 Services Exempted



# Classification of Service

- S. 66F. (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.

Exemption → Main Service & Service w.r.t Main Service – Toll Collection

- (2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description

Abatement → Mandap Keeper/ Shamiana with Outdoor catering

- (3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in specified manner

# Thank You !

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