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Swachh Bharat Cess (SBC): FAQ's



Background:

Chapter VI (Section 119) of the Finance Act 2015 contains provisions for levy and collection of Swachh Bharat Cess (SBC). Now the Government has announced 15th

November, 2015 as the date from which the provisions of Section 119 would come into effect (notification No.21/2015-Service Tax, dated 6th November, 2015 refers). Simultaneously, Government has also notified levy of Swachh Bharat Cess at the rate of 0.5% on all taxable services. Effectively, the rate of SBC would be 0.5% and new rate of service tax plus SBC would be 14.5%. As such SBC translates into a tax of 50 paise only on every one hundred rupees worth of taxable services. The proceeds from this cess will be exclusively used for Swachh Bharat initiatives.

In this context, the relevant Chapter of the Finance Act, 2015 is reproduced below:-

“CHAPTER VI

SWACHH BHARAT CESS

119 (1) This Chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(2) There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Swachh Bharat Cess, as service tax on all or any of the taxable services at the rate of two per cent. on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

(3) The Swachh Bharat Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.

(4) The proceeds of the Swachh Bharat Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Swachh Bharat Cess for such purposes specified in sub-section (2), as it may consider necessary.

(5) The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, 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 thereunder, as the case may be.’

On this issue, Hon’ble FM in his speech for Budget 2015-16 has stated as under:-

“10. The third is ‘Swachh Bharat’ which we have been able to transform into a movement to regenerate India. I can speak of, for example, the 50 lakh toilets already constructed in 201 4-1 5, and I can also assure the Members of this august House that we will indeed attain the target of building six crore toilets. But, Madam, Swachh Bharat is not only a programme of hygiene and cleanliness but, at a deeper level, a programme for preventive health care, and building awareness.”

“123. —It is also proposed to have an enabling provision to levy Swachh Bharat Cess at a rate of 2% or less on all or certain services if need arises. This Cess will be effective from a date to be notified. Resources generated from this cess will be utilised for financing and promoting initiatives towards Swachh Bharat.’

Q.1 What is Swachh Bharat Cess (SBC)?

Ans. It is a Cess which shall be levied and collected in accordance with the provisions of Chapter VI of the Finance Act, 2015, called Swachh Bharat Cess, as service tax on all the taxable services at the rate of 0.5% of the value of taxable service.

Q.2 What is the date of implementation of SBC?

Ans. The Central Government has appointed 15th day of November, 2015 as the date from which provisions of Swachh Bharat Cess will come into effect (notification No.21/2015-Service Tax, dated 6th November, 2015 refers).

Q.3 Whether SBC would be leviable on exempted services and services in the negative

list?

Ans. Swachh Bharat Cess is not leviable on services which are fully exempt from service tax or those covered under the negative list of services.

Q.4 Why has SBC been imposed?

Ans. SBC has been imposed for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q.5 Where will the money collected under SBC go?

Ans. Proceeds of the SBC will be credited to the Consolidated Fund of India, and the Central Government may, after due appropriation made by Parliament, utilise such sums of money of the SBC for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q.6 How will the SBC be calculated?

Ans. SBC would be calculated in the same way as Service tax is calculated. Therefore, SBC would be levied on the same taxable value as service tax.

Q.7 Whether SBC would be required to be mentioned separately in invoice?

Ans. SBC would be levied, charged, collected and paid to Government independent of service tax. This needs to be charged separately on the invoice,

accounted for separately in the books of account and paid separately under separate accounting code which would be notified shortly. SBC may be charged separately after service tax as a different line item in invoice. It can be accounted and treated similarly to Education cesses.

Q.8 Whether separate accounting code will be there for Swachh Bharat Cess?

Ans. Yes, for payment of Swachh Bharat Cess, a separate accounting code would be notified shortly in consultation with the Principal Chief Controller of Accounts. These are as follows:-

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts	Penalties	Deduct Refunds
0044-00-506	00441493	00441494	00441496	00441495

Q.9 What would be effective rate of service tax and SBC post introduction of SBC?

Ans. Effective rate of service tax plus SBC, post introduction of SBC, would be [14% + 0.5%].

Q.10 Whether SBC is a ‘Cess’ on tax’ and we need to calculate SBC @ 0.50% on the amount of service tax like we were earlier doing for calculating Education Cess and SHE Cess?

Ans. No, SBC is not a cess on Service Tax. SBC shall be levied @ 0.5% on the value of taxable services.

Q.11 Whether SBC is levied on all or selected services?

Ans. The Central Government was empowered to impose SBC either on all or some of the taxable services. Vide notification No 22/2015-ST dated 6-11-2015, Government has notified that SBC shall be applicable on all taxable services except services which are either fully exempt from service tax under any notification issued under section 93(1) of the Finance Act, 1994 or are otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

Q.12 How will the SBC be calculated for services under reverse charge mechanism?

Ans. In case of reverse charge under section 68(2) of the Finance Act, 1994, the liability has been shifted from service provider to the service recipient. As per section 119 (5) of the Finance Act, 2015, the provisions of Chapter V of the Finance Act, 1994, and the rules made thereunder are applicable to SBC also. Thus, the reverse charge under section 68(2) of the Finance Act, 1994, is made applicable to SBC. In this context, to clarify, Government has issued notification No. 24/2015-Service Tax dated 12th November, 2015 to provide that reverse charge under notification No.30/2012-Service Tax dated 20th June, 2012 shall be applicable for the purpose of levy of Swachh Bharat Cess *mutatis mutandis*.

Q.13 How will SBC be calculated for services where abatement is allowed?

Ans. Taxable services, on which service tax is leviable on a certain percentage of value of taxable service, will attract SBC on the same percentage of value as provided in the notification No. 26/2012-Service Tax, dated 20th June, 2012. So, this notification would apply for SBC also in the same manner as it applies for service tax.

For example, in the case of GTA, [Service Tax + SBC]% would be $(14\% \text{ Service Tax} + 0.5\% \text{ SBC}) \times 30\% = 4.35\% (4.20\% + 0.15\%)$

Q.14 Whether Cenvat Credit of the SBC is available?

Ans. SBC is **not** integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed. Further, SBC cannot be paid by utilizing credit of any other duty or tax.

Q.15 What would be the point of taxation for Swachh Bharat Cess?

Ans. As regards Point of Taxation, since this levy has come for the first time, all services (except those services which are in the Negative List or are wholly exempt from service tax) are being subjected to SBC for the first time. SBC, therefore, is a new levy, which was not in existence earlier. Hence, rule 5 of the Point of Taxation Rules would be applicable in this case. Therefore, in cases where payment has been received and invoice is raised before the service becomes taxable, i.e. prior to 15th November, 2015, there is no liability of Swachh Bharat Cess. In cases where payment has been received before the service became taxable and invoice is raised within 14 days, i.e. upto 29th

November, 2015, even then the service tax liability does not arise. **Swachh Bharat Cess will be payable on services which are provided on or after 15th Nov, 2015, invoice in respect of which is issued on or after that date and payment is also received on or after that date. Swachh Bharat Cess will also be payable where service is provided on or after 15th Nov, 2015 but payment is received prior to that date and invoice in respect of such service is not issued by 29th Nov, 2015.**

Q.16 How would the tax (Service Tax and SBC) be calculated on services covered under Rule 2A, 2B or 2C of Service Tax (Determination of Value) Rules, 2006.?

Ans. The tax (Service Tax and SBC) on services covered by Rule 2A, 2B or 2C of Service Tax (Determination of Value) Rules, 2006, would be computed by multiplying the value determined in accordance with these respective rules with $[14\% + 0.5\%]$. Therefore, effective rate of Service Tax plus SBC in case of original works and other than original works under the works contract service would be 5.8% $[(14\% + 0.5\%)*40\%]$ and 10.15% $[(14\% + 0.5\%)*70\%]$ respectively. Similar, would be the tax treatment for restaurant and outdoor catering services.

Q.17 How would the tax be calculated on restaurant services covered under Service Tax (Determination of Value) Rules, 2006.?

Ans. Swachh Bharat Cess would be calculated on the value arrived at in accordance with the Service Tax (Determination of Value) Rules, 2006. For

example, the effective Swachh Bharat Cess in respect of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, having the facility of air-conditioning or central air-heating in any part of the establishment, would be 0.5% of 40% of the total amount, i.e., 0.2% of the total amount. The cumulative service tax and Swachh Bharat Cess liability would be [14% ST + 0.5% SBC] of 40% of the total amount, i.e., 5.8% of the total amount charged.

Q.18 Whether SBC would be applicable on services covered by Rule 6 of Service Tax Rules (i.e. air travel agent, life insurance premium, purchase and sale of foreign currency and services by lottery distributors/selling agents)

Ans. Sub-rule (7D) to rule 6 has been inserted vide notification 25/2015-Service Tax, dated 12th November, 2015 so as to provide that the person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6 of Service Tax Rules, shall have the option to pay SBC as determined as per the following formula:-

Service Tax liability [calculated as per sub-rule (7), (7A), (7B) or (7C)] X 0.5%/14%

The option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.

Q.19 How would liability be determined in case of reverse charge services where services have been received prior to 15.11.2015 but consideration paid post 15.11.2015?

Ans. In respect of reverse charge mechanism, SBC liability is determined in accordance with Rule 7 of Point of Taxation Rules, as per which, point of taxation is the date on which consideration is paid to the service provider. Thus, SBC liability in such case will be 0.5% X Value of taxable service.

Q.20 Does a person providing both exempted and taxable service and reversing credit @ 7% of value of exempted service under Rule 6 of Cenvat Credit Rules, does he need to reverse the SBC also?

Ans. As SBC is not integrated in the Cenvat Credit chain and reversal under Rule 6 is payment of amount equal to 7% of the value of exempted services, hence, **reversal of SBC is not required under Rule 6 of Cenvat Credit Rules, 2004.**

CENTRAL EXCISE

Case Laws

Manufacture

- In CCE v Fitrice Packers (2015 (324) ELT 625), the Supreme Court held that printing on duty-paid paper as per design and specifications of customers with logo and name of products in colourful form would convert such paper into special wrapping paper, and hence this process was held to amount to manufacture.
- In UOI v Alcobex Metals Ltd (2015 (325) ELT 242), the Supreme Court held that 'industrial dust' arising during the course of manufacture of brass and copper, being identically placed as 'dross and skimmings', was not an excisable good.
- In Hyderabad Ammonia & Chemicals (P) Ltd. v CCE (2015 (325) ELT 167), the Bangalore Tribunal held that the activity of filling duty-paid ammonia from a tanker into cylinders did not amount to manufacture in terms of Chapter Note 9 to Chapter 28 since tankers could not be considered to be bulk packs.

Valuation

- In CCCE v Ispat Industries Ltd. (2015 (324) ELT 670), the Supreme Court held that insurance of goods during transit could not possibly be the sole consideration to decide ownership or point of sale of goods. Hence, based on the fact that sales were ex-works, it was held that cost

of insurance to cover risk of loss during transit was not includible in assessable value.

- In CCE v Official Liquidator for Brimco Plastic Machinery P. Ltd. (2015 (324) ELT 637), the Supreme Court held that installation, erection and commissioning of goods at buyer premises, being post-clearance charges, were not includible in the assessable value.
- In Hindustan Lever Ltd. v CCE (2015 (324) ELT 614), the Mumbai Tribunal held that while adopting the comparable cost of packed soap at job premises, deduction towards the cost of cartons should be allowed to arrive at assessable value of the soap cleared in bulk to job worker for packing individual soaps.

CENVAT

In CCE v Precot Meridian Ltd. (2015 (325) ELT 234), the Supreme Court held that reversal of credit on inputs used in exempted products amounted to not taking credit

- In CCE v Sundaram Auto Components Ltd. (2015 (325) ELT 104), the Madras High Court held that manufacturer could avail credit of duty paid by job worker even when he was not required to pay it.
- In Hitachi Life & Solution India Ltd. v CCE & ST (2015 (325) ELT 148), the Ahmedabad Tribunal held that credit was admissible on trolleys used for carrying components in the assembly line of Air Conditioners.

- In Sandoz Pvt. Ltd. vCCE(2015 (325) ELT 387), the Mumbai Tribunal held, based on facts, that refund of CENVAT credit under rule 5 was admissible when the amount was not debited on the date of filing refund claim, but was debited later.

Others

- In Larsen and Toubro Limited vCCE (2015 (324) ELT 646), the Supreme Court held that Ready Mix Concrete (RMC) was different from Concrete Mix, and hence, exemption under Notification No.4/1997-C.E., dated 1 March, 1997 available on on-site manufacture of Concrete Mix for use in construction, could not be extended to RMC.
- In CCCE vRhydburg Pharmaceuticals Ltd (2015 (324) ELT 457), the UttarakhandHigh Court held that benefit of area-based exemption which otherwise admissible, could not be denied merely because the notification number was wrongly mentioned in the declaration.
- In Hindustan Coca-Cola Beverages Pvt.Ltd. v UOI (2015 (324) ELT 299), the Gujarat High Court held that even in the absence of any statutory provision, interest was payable by the department on delayed grant of permission for transfer of CENVAT credit under Rule 10 of CENVAT credit rules

Service tax

Case law

- In Kingfisher Airlines Limited, Jet Airways Limited vCST (2015-TIOL-2329-CESTAT-MUM), the tribunal held that excess baggage charges collected by the Airlines were an integral part of the main service, i.e., service of transportation of passengers by air, and therefore could not be classified as services of transportation of goods by air.
- In Tata Consultancy Services Limited vCST, Mumbai (2015-TIOL-2370-CESTAT-MUM), the Tribunal held that intellectual property rights that were not covered by the Indian laws would not be covered under the taxable service category of “Intellectual Property Right services”. Moreover, the phrase ‘law for the time being in force’ in the definition of ‘intellectual property right’ implied only such laws as were applicable in India. In the present case, the appellant was paying a royalty for technical know-how, which was not covered under any Indian law, and therefore such royalty was not liable to service tax as an intellectual property right.
- In International Overseas Services vCST, Mumbai (2015-TIOL-2331-CESTAT-MUM), the Tribunal held that manpower recruitment services provided to foreign clients, involving identifying, shortlisting and confirming the employment of Indian personnel for working outside India, would qualify as export of services, and would not be taxable in India.

VAT/Sales Tax

Notifications and circulars

Delhi

- Due date for filing reconciliation return for FY 15 in Form 9 has been extended to 15 December, 2015.(Circular No. 28 of 2015-16 F, 3 (589)/Policy/V/2015/963-970 Dated 30 October, 2015)

Haryana

- Input tax credit has been restricted in cases where goods, other than goods falling in Schedule "C" and goods of special importance mentioned in section 14 of the CST Act, are sold as such in the course of inter-state trade or commerce, to the extent of amount of tax actually paid on purchase of such goods in the State, or tax payable on sale of such goods under the CST Act, whichever is lower.(Notification No.27/ST-1/H.A.6/2003/ S.59/2015 Dated 24 November, 2015)

Madhya Pradesh

- Effective 16th November 2015, an additional tax of Rs. 1/litre will be levied on sale of petrol.(Notification No. F-A-3-60/2015/1/V (35) Dated 13 November, 2015)

Maharashtra

- Exemption from VAT has been provided between 26 October, 2015 and 31 March, 2017 on sale of e-bid Re-gasified Liquid Natural Gas by Gas Authority of India Limited to the Ratnagiri Gas and Power Private Ltd. (Notification No. VAT. 1515/C.R. 118/ Taxation-I Dated 26 October, 2015)

Punjab

- Effective 17 November, 2015, VAT rate on all automobiles (i.e., commercial vehicles, passenger vehicles, three-wheelers and two-wheelers) has been reduced from 14.30% to 13.20%.(Notification No. S.O.50/P.A.8/2005/ S.8/2015 –Dated 17 November, 2015)

Case law

- In ABL Traders vCTO (2015-TIOL-2554-HC-MAD-VAT), the Tamil Nadu High Court held that input tax credit could not be denied to a buyer for failure on the seller's part to disclose the transaction in its return and deposit the tax so collected from the buyer.
- In ACTO vSwastikAgencies [2015-TIOL-2567-HC-RAJ-VAT], the Rajasthan High Court held that even though batteries and their parts could be used for other purposes, they were primarily used in motor cars, and therefore, they would be classified as parts of motor cars for levy of VAT. In this case, the assesseees were carrying on the business of sale of battery and its parts, and were charging VAT at the rate

applicable on 'parts of motor vehicles'. The AO imposed differential tax on sale of battery and its parts, contending that since battery and its parts were being used for diverse purposes and not exclusively for installation/ fitting in a motor vehicle, the rate as applicable on motor-parts could not be applied.

Entry Tax

Notifications and circulars

Rajasthan

- Effective 9 March 2015, earth moving and mining machinery including hydraulic excavator, backhoe loader, wheel/track excavator, mobile crane etc. brought into the local area have been exempted from payment of entry tax, subject to the condition that tax already deposited will not be refunded.(Notification No. F. 12(93) FD/TAX/2012-102 Dated 20 November, 2015)

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