A to Z of Swachh Bharat Cess (a-to-z-of-swachhbharat-cess

**Introduction:**

With a view to source funds for Swachh Bharat initiative, Section 119 of Finance Act, 2015 is introduced which provides for levy of Swachh Bharat Cess (SBC) on value of all taxable services at a rate of two percent. Though it was told initially that levy is going to be only on specified luxury services, but eventually it is notified with effect from 15.11.2015 on value of all taxable services at the rate of half percent. The levy is introduced at the unexpected time and in a haste manner giving not more than one week time for the trade to adapt it. Many issues popped up and CBEC has released FAQs to clarify some of them. Let us have a look at various aspects of this levy.

**Levy and Collection of SBC:**

SBC is leviable on value of all taxable services at the rate of 0.5%. Unlike EC and SHEC, though it is named as ‘Cess’, it is not a cess on service tax amount. It is an additional tax on value of all taxable services. It is not applicable to services which are not taxable under Finance Act, 1994 and those which are exempted by notifications issued there under.

**Invoicing & Tax Payment:**

SBC needs to be shown separately in the invoice after service tax amount. Further, whatever the SBC amount charged during the month or quarter shall be paid by 5th/6th of the immediately following month in cash without adjusting against CENVAT Credit. The accounting codes notified are as under;

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Swachh Bharat Cess | Tax Collection | OtherReceipts(Interest) | Penalties | DeductRefunds |
| 00-44-00-506 | 00441493 | 00441494 | 00441496 | 00441495 |

**Cum-Tax Calculations:**

In certain agreements, the services provider agrees for provision of services for a consideration which is inclusive of all taxes. In such a case, the service provider discharges service tax in the method as specified in Section 67(2) of Finance Act, 1994 that is popularly known as cum-tax method. That is to say, if the contract value is Rs 10 Crore, then service tax shall be calculated as 10 Crore \* 14/114.

Sub-section (5) of Section 119 of Finance Act, 2015 which provides for levy of SBC, expressly provides that the provisions of Finance Act, 1994 and rules made thereunder are applicable to levy and collection of SBC. Accordingly Section 67(2) is equally applicable to SBC also. Therefore even after the introduction of SBC, such service tax payable of 14% has to be taken as 14.5% and accordingly the obligation of SBC has to be met.

**Reverse charge/Joint Charge**

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It has been clarified that reverse charge and joint charge mechanism is applicable even for collection and payment of SBC also in the same manner as applicable to service tax.

For example, in case of legal services, it is service receiver liability to pay entire service tax amount to Government. In case of such services, service receiver himself is responsible to pay entire SBC amount (0.5%) to Government.

In case of works contract services, the responsibility to pay service tax is equally divided between service provider and service receiver. In such cases, 0.25% out of 0.5% of SBC will be collected and paid by service provider and it is the responsibility of service receiver to pay the balance 0.25% directly to Government.

**Abatements:**

It has been clarified that in case of services for which abatements are applicable, similar to service tax, SBC shall be computed on net taxable value after deducting the abatement portion.

For example, in case of renting of hotel rooms, service tax is applicable only on 60% of the gross amount charged towards the accommodation. Balance 40% is the abated amount which is not subject to service tax. Suppose if the amount charged towards such accommodation is Rs. 10,000/- then in such cases, similar to service tax, SBC shall be calculated on 60% of the gross amount charged i.e. Rs. 6000/- (10,000x60%).

It has also been clarified that SBC is calculated in similar manner in case of valuation of works contract and Restaurant services as provided respectively under Rule 2A and Rule 2C of the ServiceTax(Determination of Value)Rules, 2006.

**Applicability of SBC to services taxable at Special rates:**

Certain services as given under sub-rules to Rule 6 of the Service Tax Rules, 1994 are taxable at special rates at the option of service provider. It has been clarified that special rate of SBC for these services shall be calculated using the following formula. The applicable rates after applying the formula are given as annexure to this paper.

**Point of Taxation:**

As stated above, SBC is a new levy of tax effective from 15.11.2015 onwards. It has been clarified in the FAQs issued by CBEC that Rule 5 of Point of Taxation Rules, 2011 is applicable to determine the taxability. Accordingly, no SBC is applicable when amount is received before 15.11.2015 and invoice for the same is raised either before 15.11.2015 or within 14 days after levy i.e. 29.11.2015. It is not relevant when the service is provided.

In all cases where payments are received after 15.11.2015, even if invoices are issued before

15.11.2015, SBC is applicable in terms of this rule. The impact of this rule is that SBC is applicable to all cases where services are provided and invoices issued but amounts are outstanding as on 15.11.2015.

In view of this, SBC becomes applicable even to cases where services are provided much before SBC is notified but amount towards taxable service is outstanding as on 15.11.2015.

In the opinion of paper writer, applicability of this Rule 5 to cases of new levy is doubtful as the same appears to be in conflict with Section 67A which provides that the rate, value and exchange as prevailing at the time when service is provided or agreed to be provided but the rule completely ignores the time when service is provided but considers only the payment towards taxable services.

It is doubtful whether charging section 66B is applicable in cases where are provided before the levy is introduced. On a similar issue under law prevailing prior to 01.07.2012, in the case of Reliance Industries Ltd vs. CCE, 2008 (10) STR 243 (Tri-Ahmd) wherein it was held that services rendered prior to introduction of levy on a particular activity is not liable to service tax. Thus ambiguity is prevailing on applicability of SBC for services provided before 15.11.2015 but payments are received afterwards.

**SBC whether eligible as CENVAT Credit:**

No specific amendments are made in CENVAT Credit Rules, 2004 to expressly facilitate service receiver to take CENVAT Credit of SBC. Further it has been clarified in the FAQs that service receiver cannot avail CENVAT Credit of SBC as the said tax is not integrated in the CENVAT chain.

However sub-section (5) of Section 119 of Finance Act, 2015 which provides for levy of SBC, expressly provides that the provisions of Finance Act, 1994 and rules made thereunder are applicable to levy and collection of SBC. CENVAT Credit is an aspect related to collection of SBC and on this count, CENVAT Credit Rules, 2004 may even be applicable to SBC.

In the case of CCE vs. Shree Renuka Sugars Ltd, 2015-TIOL-1478-HC-KAR-CX wherein it was

considered whether sugar cess levied on imported sugar under Sugar Cess Act, 1982 is eligible for CENVAT Credit. Under Sugar Cess Act, 1982 also, provisions of Central Excise Act, 1944 and rules madethereunder are made applicable for levy and collection of sugar cess. In such scenario, the Karnataka High Court held that even in the absence of specific provisions in CENVAT Credit Rules, 2005 about sugar cess, it is nothing but excise duty under Rule 3 of the CENVAT Credit Rules, 2004 and accordingly eligible for CENVAT Credit.

Applying the same analogy to SBC, it appears that a service receiver is eligible for CENVAT Credit of SBC even in the absence of specific provisions in CENVAT Credit Rules, 2004 in this regard. However, those assessees adopting conservative approach have to be very cautious in availing the credit post implementation of SBC as it may be possible that some of the vendors do not disclose service tax and SBC component separately in their invoices which might lead to availment of SBC. Hence, the assessee has to be very cautious and avail only such component pertaining to service tax as credit and not the SBC.

**SBC discriminates SEZs and EOUs/other exporters**

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Exemption of services procured by SEZs towards exports are guided by Notification No 12/2013-ST dated 01.07.2013. SEZs are entitled to either ab-intio exemption or exemption by refund of service tax paid on services used for export upon satisfaction of certain conditions as laid down in the said notification. This exemption notification is given to SEZs under Section 93(1) of Finance Act, 1994.

It has been clarified that all the exemptions provided under Section 93(1) of Finance Act, 1994 areequally applicable to SBC also. On this count SEZs technically becomes eligible to procure domestic services without paying any SBC or eligible for refund if it is paid.

On the other hand EOUs and other major exporters are entitled to get refund of service tax paid on domestic services used for export under Rule 5 of CENVAT Credit Rules, 2004. As discussed above, it has been clarified that CENVAT Credit of SBC is not available. In such scenario, refund of SBC under this Rule 5 is not available. Thus this would lead to a scenario where SEZs are entitled to claim exemption of SBC on their input services used on export but on the other hand EOUs and other major exporters are not entitled to similar exemption benefit and their exports has to bear the burden of SBC.

In the opinion of the paper writers, it may not be the legislative intent to relieve SEZs from SBC especially in the circumstances where CBEC has expressly clarified that SBC is not eligible for CENVAT Credit and what is not allowed under CENVAT Credit route is generally not allowed under refund or exemption route.

Therefore Government is required to clarify this issue at the earliest to avoid litigation.

**Conclusion:**

Introduction of SBC is one more example of how tax laws are enforced in our country without giving any importance for deliberation with trade and tax experts to understand and address the potential issues that may arise. Levy is enforced in less than one week time after its notification without even seeking views of trade bodies or making proper study on various aspects. Much ambiguity is built up in form of CBEC clarifications on eligibility of CENVAT Credit and applicability to services provided before levy but payments are received after the levy become effective. Before parting, recalling this quote- “Death, taxes and childbirth! There’s never any convenient time for any of them”. We have no option but to simply accept them.

**Annexure:**

Table showing the SBC rates for services taxable at Special Rates:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Rule | Service | Special rate of ST | Special SBCrate | Rate incl. SBC |
| 7 | Air travel agentservices | Domestic bookings—0.7%International bookings— 1.4% | 0.025%0.05% | 0.725%1.45% |
| 7A | Insurance Serviceswith premium towardsinvestment notindicated separately | First Year— 3.5%Subsequent Years —1.75% | 0.125%0.0625% | 3.625%1.8125% |
| 7B | Money ChangingServices:1. Currencyexchanged is upto Rs.1 lakh2. Currencyexchanged is betweenRs. 1 to 10 lakhs 3. Currencyexchanged is aboveRs. 10 lakhs | Higher of 0.14% ofgross currencyexchanged or Rs. 35Rs. 140 plus 0.07% ofcurrency exchanged inexcess of Rs. 1 lakhRs.770 plus 0.014% ofcurrency exchanged inexcess of Rs. 10 lakhs | Higher of0.005% or Rs.1.25Rs 5 plus0.0025%Rs.27.5 plus0.0005% | Higher of0.145% or Rs.36.25Rs. 145 plus0.0725%Rs.797.5 plus0.0145% |

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