

## Swachh Bharat Cess - CENVAT Credit against GST or Not:

### Introduction:

Swachh Bharat (SB) Cess has been imposed on the value of all taxable services with effect from 15.11.2015 (vide Notification No. 21/2015-ST dated 06.11.2015). The said levy has been imposed by the Central Government by exercising its power under Section 119 of the Finance Act, 2015, which specifically indicates that SB Cess shall be levied and collected, as Service Tax.

Considering that the SB Cess is a form of Service Tax, Section 93(1) of the Finance Act, 1994 grants the power to the Central Government to exempt a part or whole of Service Tax in the public interest. Pursuant to the above, the Central Government has exempted levy of SB Cess in excess of @ 0.5% on all taxable services effective from 15.11.2015 [vide Notification No. 22/2015-ST dated 06.11.2015].

Accordingly, the effective rate of tax applicable on taxable services would increase from 14% to 14.5% with effect from 15.11.2015.

It is to be noted that the SB Cess shall be levied at abated rate with respect to services specified under the Abatement Notification No. 26/2012-ST dated 20.06.2012. Also, the notification which prescribes the extent to which Service Tax is payable by the recipient of service on specified services under the reverse charge mechanism, has also been made applicable to the SB Cess (vide Notification No. 24/2015-ST dated 12.11.2015).

Further, Section 119 of the Finance Act, 2015 provides that all the provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder shall apply for the levy and collection of the SB Cess. Notification No. 22/2015-ST dated 06.11.2015 (as amended) specifically indicates that the value for the purpose of levying SB Cess shall be determined in accordance with the Service Tax (Determination of Value) Rules, 2006. Also, that SB Cess leviable 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.

### Points to be noted:

- Considering that SB Cess is levied as Service Tax, the credit of SB Cess levied on input services should be available to a service provider or a manufacturer to discharge the output SB Cess liability as per the relevant provisions under the CENVAT Credit Rules, 2004.
- However, the Frequently Asked Questions (FAQ) released by CBEC indicates that SB Cess credit will not be available and neither any CENVAT credit can be utilized to pay SB Cess.

This is as per the Answer to Question No. 14 in the FAQ, mentioned below:

*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.*

- However, this appears to be inconsistent with the language of the law specifically in light of:
  - ✓ Section 119 of the Finance Act, 2015;
  - ✓ Section 93(1) of the Finance Act, 1994; and
  - ✓ Notifications issued in this regard which clearly indicate that SB Cess is being levied as Service tax.
- Considering the fact that taxing laws have to be interpreted strictly, it does appear that CENVAT credit of SB Cess should be available to an assessee;

- Moreover, providing no CENVAT Credit of the SB Cess can lead to cascading effect which is definitely not in accordance with the value add regime or the upcoming Goods and Service tax (GST) regime

## Conclusion:

- Given that the FAQ is released by the CBEC, it is evident that there would be litigation on this aspect unless the same has been clarified by the Central Government that the CENVAT credit of SB Cess is available to an assessee.
- For the moment, one may pay SB Cess in cash to avoid any disputes until the Central Government has clarified this point. The CENVAT Credit with respect to SB Cess may be availed in the CENVAT Credit register maintained, but it may be ensured that the same is not utilized until further clarifications.