

## **FAQ on Swachh Bharat CESS**

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Vide Section 119 of the Finance Act, 2015, a new tax called, Swachh Bharat CESS (SB CESS) has been levied @ 2 % on the value of taxable service, from a date to be notified later. Now, as per Notification 21/2015 ST Dt. 06.11.2015, the levy has been notified with effect from 15.11.2015. The various issues in this regard are dealt with below in the form of FAQ.

1. At what rate SB CESS is leviable?

Though the rate prescribed under Section 119 of the Finance Act, 2015 is 2 %, as per Notification 22/2015 ST Dt. 06.11.2015, exemption has been provided for any SB CESS in excess of 0.5 % on the value. So, SB CESS is payable at 0.5 % of the value of taxable services, making the effective rate of service tax including SB CESS as 14.5 %.

2. At what rate SB CESS is leviable, when service tax is paid at the special rates prescribed under Rule 6 (&), 6 (7A), 6 (7B) 6 (7C) of the Service Tax Rules, 1994? i.e. air travel agents, life insurer, forex agents, lottery agents, respectively?

The SB CESS for such persons, who have opted to pay service tax under the said Rules, would be

Special Rate X (0.5 / 14)

For example, an air travel agent can pay service tax @ 0.7 % of the basic fare as per Rule 6 (7) ibid. For him the SB CESS payable would be

$0.7 * (0.5 / 14) = 0.025 \%$ . His total liability including SB CESS would be 0.725 % of the basic fare.

3. Is SB CESS leviable on excise duties / customs duties?

No. It is leviable only on taxable services.

4. Is SB CESS payable on the Service Tax or on value of Service?

It is payable @ 0.5 % on the value of service and not on service tax.

5. Is SB CESS payable on the gross value or on abated value, if any abatement is applicable or on the value of service specified under Rule 2A / 2 B / 2 C of the Service Tax (Determination of Value) Rules, 2006.

SB CESS is payable on the "value of services", i.e on abated value, wherever abatements are prescribed. For example, if GTA service is availed for Rs.5000, after 70 % abatement service tax is payable on a value of Rs.1,500. Service tax thereon would be @ 14 % on Rs.1,500, i.e. Rs.210 and SB CESS would be 0.5 % on Rs.1,500, i.e. Rs.7.5, totalling RS.217.50. As per proviso to Notification 22/2015, no SB CESS shall be leviable on services which are exempt from payment of service tax by a notification issues under Section 93 (1). Abatement notification 26/2012 is also an exemption notification issued under Section 93 (1).

Further, this aspect has also been made more clear by inserting a proviso / Explanation to this effect in Notification 22/2015, vide Notification 23/2015 ST Dt 12.11.2015

6. Can cenvat credit of SB CESS paid on input services be availed by manufacturers / Service Providers?

SB CESS leviable under Section 119 (2) of the Finance Act, 2015 has not been included in the list of eligible duties / taxes for Cenvat Credit, under rule 3 (1) of the Cenvat Credit Rules, 2015, as of now. So, credit of SB CESS paid on input services cannot be availed by manufacturers and service providers, as of now.

7. Can any other cenvat credit available with a service provider be used for making payment of SB CESS?

In as much Rule 3 (4) of the Cenvat CRedit Rules, 2004, dealing with utilisation of cenvat credit has not been amended as of now, enabling utilisation of cenvat credit for payment of SB CESS, cenvat credit cannot be used to pay SB CESS and it has to be paid only in cash, as of now. But this issue is debatable. As per Rule 3 (4) *ibid*, cenvat credit can be used for payment of "any service tax on any output service" and SB CESS is also levied as service tax, as per Section 119 (1) of the Finance Act, 2015. Hence, it can be argued that the balance of Cenvat Credit of Excise duty / Service Tax, available with a manufacturer, can be utilised for paying SB CESS on his output service. (But CBEC's FAQ says that credit of other duties cannot be used to pay SB CESS. But we feel that this clarification is not legally sustainable. Reliance is placed on the following decisions. 2004 (171) ELT 67 Tri-Del. 2004 (176) ELT 469 Tri-Del, 2010 (251) ELT 32 P & H)

8. What is the implication of SB CESS with reference to services provided before and after 15.11.2015; invoices raised before and after 15.11.2015; and payments received before and after 15.11.2015?

At the outset, it has to be kept in mind that being a new levy, no new levy shall apply for the services provided before the introduction of the new levy. Rule 5 of the Point of Taxation Rules, 2011 which deals with payment of service tax in case of new services has to be read only in that context. For the services provided before introduction of a new levy, no service tax is payable irrespective of date of raising invoice or date of receipt of payment. This is the settled position of law. The various situations contemplated in Rule 5 would relate only to cases where the service is provided on or after the introduction of the new levy.

In the context of SB CESS, it has now been clarified by the CBEC in this regard, through a press release that the provisions of Rule 5 of Point of Taxation Rules, 2011 shall apply in such cases, as this is a new levy. The said Rule is reproduced below for ready reference.

***RULE 5. Payment of tax in case of new services. — Where a service is taxed for the first time, then, -***

*(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;*

*(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.*

Accordingly,

1	For the services provided before 15.11.2015 (irrespective of date of invoice and date of receipt of payment)	SB CESS is not payable.
2	Payment is received and Invoice has been raised before 15.11.2015, for the services provided on or after 15.11.2015	SB CESS is not payable.
3	Payment is received before 15.11.2015 and invoice has been issued on or before 29.11.2015, for the services provided on or after 15.11.2015	SB CESS is not payable.
4	Service is provided on or after 15.11.2015. Payment is received and invoice is issued on or after 15.11.2015	SB CESS is payable.
5	Service is provided on or after 15.11.2015. Payment is received before 15.11.2015 and invoice is not issued before 29.11.2015	SB CESS is payable.

9. Is SB CESS applicable for service tax payable under reverse charge also?

Yes. This has been made further clear by Notification 24/2015 ST Dt 12.11.2015.

As per Rule 7 of the Point of Taxation Rules, 2011, the date of payment is the point of taxation for reverse charge. But since it is a new levy it will not apply for any services received prior to 15.11.2015. It will apply only for the services received on or after 15.11.2015.

For example, for the services received during the whole month of November 2015, invoice is received in December, 2015, for, say Rs.10,000, for which payment will be made thereafter, SB CESS shall be payable on proportionate basis, i.e. on Rs.10,000 \* 16/30 = Rs.5,333. (But in the CBEC's FAQ it is clarified that in such cases full SB CESS is payable as the date of payment is the POT. But we are of the view that such clarification is not correct as there can be no levy of SB CESS if the service is rendered / received prior to 15.11.2015)

10. What is the accounting code for SB CESS?

Swachh Bharat CESS Minor Head	: 0044-00-506
Tax Collection	: 00441493
Other Receipts	: 00441494
Penalty	: 00441496
Deduct Refund	: 00441495

(AS per CBEC's FAQ)

11. Is SB CESS payable on any exempted services or on any services covered under negative list?

No.

12. A service provider has provided services well before 15.11.2015 and also raised an invoice. Though he should have also paid the service tax, due to financial difficulties, he has not paid service tax and is going to pay it only after 15.11.2015. Is he liable to pay SB CESS also now?

No.

(The above analysis is based on the relevant provisions of law, which are in force and as amended and clarified upto 13.11.2015 and any amendments thereafter, would change the above views).

**Notification No. 21/2015-Service Tax, Dated: November 6, 2015**

In exercise of the powers conferred by sub-section (1) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government hereby appoints the 15<sup>th</sup> day of November, 2015 as the date with effect from which the provisions of Chapter VI of the said Act, shall come into force.

**Notification No. 22/2015-Service Tax, Dated: November 6, 2015**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all taxable services from payment of such amount of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the said Act, which is in excess of Swachh Bharat Cess calculated at the rate of 0.5 percent. of the value of taxable services:

Provided that Swachh Bharat Cess shall not be leviable on services which are exempt from service tax by a notification issued under sub-section (1) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

This notification shall come into force from the 15<sup>th</sup> day of November, 2015.

**Notification No.23/2015-Service Tax, Dated: November 12, 2015**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 22/2015-Service Tax, dated the 6<sup>th</sup> November, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 843 (E), dated the 6<sup>th</sup> November, 2015, namely:-

In the said notification, after the proviso, the following shall be inserted, namely:-

Provided further that Swachh Bharat Cess shall be leviable only on that percentage of taxable value which is specified in column (3) for the specified taxable services in column (2) of the Table in the notification No. 26/2012-Service Tax, dated 20<sup>th</sup> June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 468 (E), dated the 20<sup>th</sup> June, 2012.

*Explanation.-* It is hereby clarified that value of taxable services for the purposes of the Swachh Bharat Cess shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.

**Notification No. 24/2015-Service Tax, Dated: November 12, 2015**

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby provides that notification No. 30/2012 - Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012 shall be applicable for the purposes of Swachh Bharat Cess mutatis mutandis.

**Notification No. 25/2015-Service Tax, Dated: November 12, 2015**

In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:-

1. (1) These rules may be called the Service Tax (Second Amendment) Rules, 2015.
- (2) They shall come into force on the 15th day of November, 2015.
2. In the Service Tax Rules, 1994, in rule 6, after sub-rule (7C), the following sub-rule shall be inserted, namely:-

(7D) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by 0.5 and dividing the product by 14 (fourteen), during any calendar month or quarter, as the case may be, towards the discharge of his liability for Swachh Bharat Cess instead of paying Swachh Bharat Cess at the rate specified in sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015) read with notification No.22/2015-Service Tax, dated the 6th November, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 843 (E), dated the 6th November, 2015, and 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.

- This notification shall come into force from the 15th day of November, 2015

## **PRESS NOTE**

Swachh Bharat Cess will come into effect from 15th November 2015, at the rate of 0.5% on all services, which are presently liable to service tax. This will translate into a tax of 50 paise only on every one hundred rupees worth of taxable services. The proceeds from this cess will be used for financing and promoting Swachh Bharat initiatives.

Some doubts are being raised with respect to the levy of Swachh Bharat Cess, such as,-

(i) what would be Swachh Bharat Cess on services where service tax is being paid under the alternative rates of service tax?

(ii) what would be the value of taxable services for computation of Swachh Bharat Cess?

(iii) whether reverse charge mechanism would apply for the levy of Swachh Bharat Cess?

(iv) what would be the point of taxation for Swachh Bharat Cess ?

In this regard, it is clarified that answers to the above queries are in the provisions of sub-section (5) of section 119 of the Finance Act, 2015 by which all the provisions of service tax as contained in Chapter V of the Finance Act, 1994 have been made applicable to Swachh Bharat Cess. It is, thus, very clear that all the provisions including those related to computation of taxable value, assessment, exemption, payment, penalty applicable to service tax would also apply in respect of Swachh Bharat Cess.

Service tax is presently levied at alternative rates in respect of service provided by air travel agents, life insurance service, service in relation to sale/purchase of foreign exchange including money changing and service by lottery distributors/selling agents, subject to fulfilment of conditions prescribed under the Service Tax Rules. Option has been provided for levy of Swachh Bharat Cess also at alternative rates in respect of the above mentioned services. The alternate rate of Swachh Bharat Cess would be:

Service tax liability (at the alternate rate) X 0.5/14.

As regards the taxable value for the levy of Swachh Bharat Cess, it would be the same on which service tax is levied. Swachh Bharat Cess would be calculated on abated value or value arrived at under the Service Tax (Determination of Value) Rules, 2006, as the case may be. 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% i.e 0.2%. The cumulative service tax and Swachh



Bharat Cess liability would be 5.8% (14.5% of 40%) of the total amount charged.

Similarly, a person liable to pay service tax on reverse charge basis would be liable to pay Swachh Bharat Cess also on reverse charge basis. As regards Point of Taxation, since this levy has come for the first time and all services (except those services which are in the Negative List or are wholly exempt from service tax) are being taxed, it is a new levy, which was not in existence earlier. Rule 5 of Point of Taxation Rules would be applicable in this case. Therefore, in case 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 case 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.

Thus, it may be seen that all issues relating to Swachh Bharat Cess are addressed in the Service Tax provisions itself by virtue of the applicability of Chapter V of the Finance Act, 1994 and the rules made thereunder.