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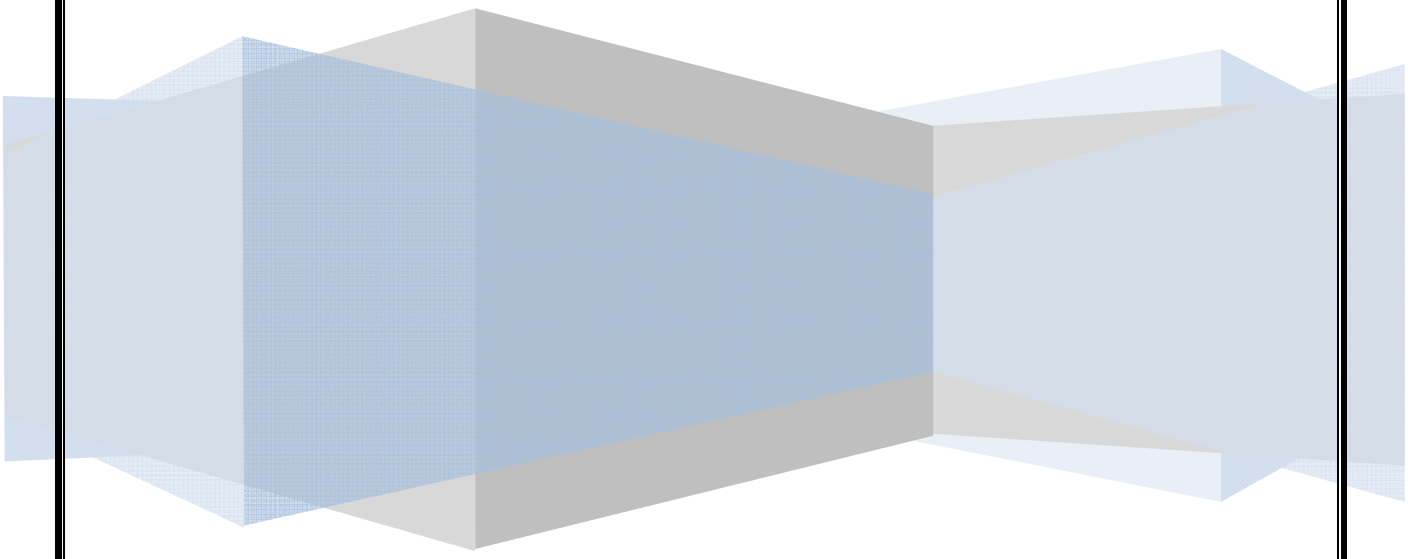

PREFACE

Service tax is a subject which has been posing quite a few problems to assessees since its introduction in the year 1994 through Chapter V of Finance Act 1994. Over Rs.131,000 Crores has been collected last year on this count. The service tax law like other tax laws prevalent in the country is not simple, not equitable, not certain and tax administration not fair. Over the years there have been number of instances where assessees have had to face litigations with the department at various levels mainly due to lack of clarity in the subject matter. It has been observed that though the Tribunals and Court provide the clarity, the demands from the revenue for the past periods are raised. Now with the **Negative List** slated to augment revenues to at least Rs. 1,80,000 crores, the earlier understanding of the provisions have substantially changed. The professional advisor would also face difficulties while advising the clients in this area which is in a developing stage.

Though an attempt has been made to remove confusion by appropriate clarifications [education guide] where ever applicable, the assessee's woes and the advisors problems are far from over. One of the main reasons for this has been the fact that the subject has not yet developed to the fullest extent and we continue to see changes every year by way of amendments, exemptions, clarifications being given even after 1.7.2012. The comprehensive approach to cover the taxes has not been correspondingly found seamless cenvat credit with most major restriction still remaining. Invariably it is seen that the changes have been primarily been aimed at increasing the revenue to the government even if it means arming the tax administrators unduly.

It is not uncommon to find entrepreneurs / business advisors/ chartered accountants new to service tax who are doubtful/ unclear about the legal provisions pertaining to the same. This brief online book is aimed at such Chartered Accountants in employment as well as practice / assessees who are new to service tax practice and are interested in understanding the basic concepts of the subject so that they can take steps to ensure effective compliance with the law. The attesting auditor may also like to have a handily easy to refer book for ensuring compliance under laws he certifies when he signs off the financials for corporate. Keeping this fact in mind and as well as the constraints as to space, this book deals with concepts of service tax to guide the assessee/ professional rather than an in-depth discussion of the legal provisions, especially the taxable services individually.

This book has attained its present form partly due to the efforts of the partners of Hiregange & Associates, Chartered Accountants namely - CA Madhukar N Hiregange, CA Rajesh Kumar

TR, CA Sudhir V S and also the efforts of qualified staff who have contributed especially CA Roopa Nayak.. We acknowledge their efforts.

The book contains an overview of service tax initially which would provide the reader with a bird's eye view of service tax. The reader is advised to go through the same before proceeding onto the subsequent chapters. This book also contains some of the important procedures which would be useful to the assessee in complying with the legal provisions of service tax.

The authors have tried their best to make this online book as complete as possible but where the readers have any doubt regarding the subject matter are advised to refer a more comprehensive publication regarding the same or seek expert opinion.

The chapters in this book have been arranged in such a way as to give the reader a fairly good idea as to the provisions of law. The authors would also welcome valuable suggestions from the readers, which would help us in ensuring a better offering next time around. For any comments or feedback please write to mhiregange@gmail.com, rajesh@hiregange.com or sudhir@hiregange.com For your queries on the subject you may also host your queries on pdicai.org under Service Tax segment.

Finally, we wish the reader all the best in their career/ practice.

Team Hiregange

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Bangalore

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OVERVIEW OF SERVICE TAX

Tax on services has been in vogue in India since 1994 when it was introduced for the first time. When it was introduced initially, there were three services which were liable but over the years various other services have been added to take it to 119 in 2011. This year with the negative list the number of services could be guesstimated to be in excess of 300…

One of the main reasons for the services to be taxed is that the manufacturing sector can be taxed only to a certain extent if we are to ensure the competitiveness of our industry, since ours is no longer a closed economy; all activities are to bear the burden. Services presently forming more than 57 % of the GDP are expected to reach 70% this decade, which should also bear the burden of tax. This tax would be subsumed into the Goods and Service Tax which maybe in place in the next few years.

The levy of service tax was initially under the residuary powers conferred to the Union by entry 97 of List I to the Seventh Schedule to the Constitution of India. Later entry 92C was introduced specifically to cover 'Taxes on Services', though not put into effect till date. Unlikely with GST in the horizon.

Constitutional validity and concepts

Whether tax on services is constitutionally valid?

In a number of cases, the constitutional validity of service tax has been questioned and the decisions of the High Courts/ Supreme Court have been in favour of revenue. In *Tamil Nadu Kalyana Mandapam Assn Vs UOI*((2004) (167) ELT 3) S C,, the levy of service tax on mandap keepers and outdoor caterers was upheld by the Supreme Court as a tax on services and not a tax on sale of goods or hire purchase activities. The levy of service tax on professional services of Chartered Accountant, Cost Accountant and Architect was also upheld by the Supreme Court in All India Federation of Tax Practitioners Vs UOI (2007 (07) STR 625-SC).

In *GDA Security Private Ltd., Vs. UOI*(2006(02)STR542) it was held by the Madras High Court that the tax on profession was levied in order to allow professionals to carry on a particular profession, trade or calling or employment in a particular state. The aspect of providing a service was held to be different and independent of the aspect of profession and the levy of service tax on security agency was upheld.

This has been the case for the chartered accountants, architects and advertisers also. The question of constitutionality would favour the revenue. As on date, the validity of service tax levy on rental

of immovable property is an issue to be decided by the Supreme Court though the Delhi High Court has admitted a writ petition in Home Solution Retail India Ltd Vs UOI (2009-TIOL-196-DEL-HC-ST) challenging the levy of service tax on pure renting of immovable property without there being a service associated with the renting.

The Supreme Court recently upheld the validity of service tax on financial leasing services including equipment leasing and hire purchase in Association of Leasing & Financial Service Company (2010-TIOL-87-SC) and observed that service tax would be payable as there is a rendition of service in financial transactions.

In addition to the above, the other relevant decisions are discussed below where the courts have upheld the validity:

i. Addition Advertising Vs UOI 1998 (98) ELT 14: Service tax on advertising service is constitutional and not violative of article 14 and 19(1) of Constitution of India.

ii. Indian Institute of Architects Vs UOI 2002 (139) ELT 245: Service tax is a tax levied on services and it is not a tax on professionals. Parliament is competent under entry 97 to levy service tax on architects.

iii. Secretary, Federation of Bus Operators 2001 (134) ELT 618: Tax on service is distinct from tax on profession, trade or calling and not falls under entry 60 of list II. Different aspects are liable for tax.

iv. LV Sankeshwar 2006 (4) STR 257: Tour operator not to be termed as transferor of right to use vehicles as per article 366(29A) of the Constitution of India. Levy of service tax neither tax on passenger nor goods.

v. Infotech Software Dealers Association (2010 (020) STR 0289 Mad): wherein an important decision in the context of taxation of software has been delivered. While holding that software (packaged or customized) is goods, the Court has also upheld the validity of levy of service tax on IT software services.

What is the concept of "service" as understood here?

Assessees should note that in order to attract the levy under service tax law, there should first of all be a service finding a mention in sec 65(105). The concept of "service" though has not been defined for this purpose and one would have to refer the meanings given by dictionary to understand the same or even the word as understood commercially can also be considered. This view has been followed in Bajaj Auto Ltd Vs CCE Pune [1997 (94) ELT 545 (Tri)].

Under the positive list based taxation, the term service was not defined. Under negative list based taxation, wef 1.7.2012, there is a specific definition of term service.

The concept has been explained in the chapter on levy.

What would be the position under law, where service involves goods?

Service tax is a tax on service and not a tax on sale of goods. The various decisions given by the Courts on the constitutional validity of service tax have also clarified his aspect. It has accordingly been held that service tax and VAT are mutually exclusive and the definition of service confirms this. There are notifications issued under service tax providing deduction / abatement in respect of the transfer of property in goods made during the provision of services and this deduction/abatement would be from the gross value charged for the service. The applicability of these notifications would depend on the nature of the services involved and the activities performed. Before opting for the benefit of these notifications, the assessee should ideally perform a cost-benefit analysis as there are associated conditions to be met to claim such deduction.

Governing provisions

The provisions pertaining to service tax are given in Chapter V and VA of Finance Act 1994 as amended from time to time. The Central Government has also been empowered to make rules to carry out the provisions of this Chapter, through section 94 of this chapter. This comes along with the power to grant exemptions from Service Tax u/s 93. The Government has consequently notified various sets of rules, the provisions of which have been explained as we proceed with this book. The rules which may be noted are as follows –

- Service Tax Rules 1994;
- Cenvat Credit Rules 2004;
- Export of Service Rules 2005;
- Service Tax (Registration of Special Category of Persons) Rules 2005;
- Service Tax (Determination of Value) Rules 2006;
- Point of Taxation Rules 2011
- Place of Provision of Services Rules
- Taxation of Services (Provided from outside India and received in India) Rules 2006;Works Contract (Composition Scheme for Payment of Service Tax) Rules 2007;
- Service Tax (Advance Rulings) Rules 2003;
- Service Tax (Publication of Names) Rules 2008;
- Service Tax (Provisional attachment of property) Rules 2008

Levy and collection under earlier service tax law[upto 1.7.2012]

Thelevy of service tax extends to whole of India except that it does not extend to a service provider providing taxable services from the state of Jammu and Kashmir by virtue of section 64 of Chapter V of Finance Act. Under negative list based taxation, the service tax levy is applicable on the services provided in taxable territory of India.

Under positive list based taxation, the question of taxing a service would arise where the service that is provided by the service provider happens to be covered under the any of the sub-clauses of section 65(105) . Once the relevant clause is identified, the concept of "service provider" and "service receiver" would also have to be satisfied in order to tax the concerned service. In most of the categories, the "service provider" and the "service receiver" can be *any person*.

In other words, under erstwhile service tax law, the levy of service tax was on the provision of specified taxable service at the rate of 12% wef 1.4.2012[10% wef 28.2.2009]. Further to understand the levy and collection of the service tax upto 1.7.2012, understanding the meaning and scope of the term taxable service would be important.

Where the criteria discussed above are satisfied, the tax would be levied on the service provider who would be liable to collect the service tax amount from the service receiver and remit it to the government in the manner prescribed. However in certain cases the statute requires the service receiver to pay the service tax to the government. The charge of service tax would be at the rates set out in section 66 which was increased from 10% to 12% wef 1.4.2012. The education and secondary higher education cess would be payable on this amount at 3% and the total service tax including cess is 12.36%[from 1.4.2012 to 30.6.2012].

Since the levy of service tax is on the provision of service, the services provided before the date on which such services were brought under the tax net, would not be subjected to service tax. Readers here may note that even if the bills for the services provided are raised by the service provider after the date on which the service became taxable, there would be no liability as the services had been provided during the period when the service was not taxable at all. This has been confirmed by the Ahmedabad High Court in Schott Glass India (P) Ltd Vs Commissioner Central Excise and Customs Vadodara II (2009-TIOL-82-HC-AHM-ST)

Concept of Classification under earlier service tax law [upto 1.7.2012]

The classification of the service is defined to mean identification of the appropriate sub-clause under sec 65(105). The service provider should ensure that the service / activity is classified properly as this would enable him to ascertain his liability properly. Correct classification is

critical as the exemptions under service tax barring the general exemptions are based on specified categories and if the classification is not proper, the service provider may either end up paying more than what is required or even face a liability.

It is possible that the services provided may fall under more than one category. Similarly the service provider may be providing numerous individual services or combined services. For the purposes of classification, the category which gives the most specific description of the service should be adopted. Where composite services (combination of different services) are provided, the classification should be on the basis of the service which gives them their essential character. Where the aforesaid two principles cannot be followed for classification, the classification shall be under the sub-clause which occurs first among the sub-clauses which equally merit consideration as per section 65A. In addition to this, the non statutory principles as to consideration of trade parlance especially where certain "terms" are not defined under law would also assume significance as indicated in *CC General (New Delhi) Vs Gujarat Perstorp Electronics Ltd* 2005 (186)ELT532

Registration

Every person liable to pay service tax is required to register by making an application to the Superintendent of Central Excise in terms of section 69. The service provider before registering shall ensure that the basic exemption limit for registration available to all service provider has been crossed. The present notified limit at present is Rs. 10 lakhs, specified by notification 6/2005 ST dated 01.03.05 as amended from time to time. This notification superseded by notification no.33/2012-ST. Branded service providers i.e. providing services under brand name or trade name of others would not be eligible for the exemption. An illustration could be the commercial coaching franchisees. [example – tally academies]. The exemption from registration would not be available for a person who is liable to pay service tax as receiver of services. Moreover, the aggregate value of taxable services provided in the preceding financial year should not exceed Rs. 10 lakhs in order to avail the benefit of exemption.

In terms of Rule 4 of Service Tax Rules 1994, an application in Form ST 1 would have to be filed within thirty days from the date on which the taxable service is provided/tax is levied on such service. Such form is now to be filed online through www.*aces.gov.in* wherein the assessee would have to first register himself as a user and then fill the form ST-1 (the procedure in this respect is discussed in the chapter "Procedures with regard to Registration")The service provider also has

an option of going in for centralized registration where the accounting and/or billing activities are centralized.

A change in the information or any additional information sought to be given shall be intimated in writing to the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise. There is a penalty of Rs 10,000/- for delay in registration.

Concept of consideration and valuation

After ascertaining the taxability, the valuation of taxable services becomes important for the reason that the service tax liability is determined based on the value of taxable service. The value is arrived normally on gross basis and is on the amounts charged for the taxable services provided. The non-taxable services or non-service activities would not form part of gross value for service tax computation. As per section 67, where the consideration is wholly in money, the gross amount charged for the service would be liable. Even reimbursements of expenses shall be liable as per Rule 5(1) of Service Tax (Determination of Value) Rules 2006 unless the same is incurred by the service provider as a pure agent of the service receiver. The conditions to be satisfied for this are explained in the chapter on valuation. The gross amount charged shall include payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment. One would have to refer the rules on valuation to ascertain the value where the consideration is not wholly or partly in monetary terms or where the same is not ascertainable.

Payment of service tax

The service provider providing taxable services shall be required to pay service tax under section 68(1). However, the service provider does not have to pay service tax until the value of service is collected, from the service receiver towards the taxable services provided by virtue of Rule 6 of Service Tax Rules 1994.

However with the introduction of Point of Service Rules, effective from 01.04.2011, the above said discussion would not be of much of importance, since it requires payment of service tax at earliest of the following

a. Date on which service is provided or to be provided
b. Date of invoice
c. Date of payment

However in case of import of service under section 66A point of taxation shall be date on which invoice was received or payment is made which ever was earlier.

i. Applicability of rate of service tax: The service tax rate shall be the rate prevailing on the date on which the service is deemed to be provided as per the Point of Taxation Rules, 2011. Earlier the rate prevailing at the time of raising the invoice was considered for charging service tax, irrespective of date of realization.

ii. As per section 67A, the rate of service tax is rate applicable when service provided or agreed to be provided. In Delhi Chartered Accountants Society (Regd) vs UOI and Ors(2013-TIOL-81-HC-Del-ST) held that where services of Chartered Accountants were actually rendered before 1.4.2012 and the invoices also issued before that date, but the payment was received after that date, the rate of service tax would be 10% and not 12%.

iii. Payment of Service Tax: The service tax has to be paid to the credit of Central Government within due dates immediately the following month/quarter in which the services are deemed to be provided as per the Point of Taxation Rules, 2011.

iv. Adjustment for non-provision of service: In case of assessee who has issued an invoice/ received payment towards a service to be provided and has not provided service (in full or part) or where amount of invoice is renegotiated due to deficient provision of service or any terms of contract, he is eligible to take the credit of excess ST paid by him if he:

    i. Refunded the payment along with the ST to the receiver of service or
    ii. Issued a credit note for the value of service not so provided to the person to whom he has issued invoice.

Enhancement of the adjustment limit: In case where the assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability, can be adjusted in the subsequent period without any monetary limit.

<u>Payment u/s 68(2) by the service receiver under earlier service tax law</u>

Generally it is the service provider providing taxable services, who is responsible for collection of service tax from his customer/client.. But section 68(2) empowers the government to notify the services with regard to which the service receiver would be held liable to pay service tax to the government. The government has consequently notified the following services in this regard through notification 36/2004 ST dated 31.12.2004 as amended from time to time –

- Goods Transport Agency service – specified person paying the freight
- Business auxiliary service of distribution of mutual fund by a mutual fund distributor or agent – mutual fund or asset management company receiving such service

- Sponsorship service provided to any body corporate/firm in which case, thebody corporate or firm receiving such sponsorship service would be liable
- Taxable services received by any person in India from abroad – the recipient of such service in India.
- Insurance auxiliary service by an insurance agent – person carrying the general insurance business or life insurance business

In the opinion of the authors, where the service provider pays the service tax, the service receiver can still be called upon by the department to pay service tax as a receiver of such services. However, if one were to go as per the clarification provided by the department through its master circular on procedural issues 97/6/2007 dated 23.08.07, it had clarified that where service tax had been paid by the service provider the same could be taken as credit. This would lend credibility to the theory that a transaction cannot be taxed twice which could be a possible defense.

Payment of Interest

Section75 of Chapter V of Finance Act 1994 as amended from time to time provides for payment of interest by the assessee where there is short payment or delay in payment of service tax. The present notified rate is 18% p.a. simple interest and this should be paid along with the tax. The interest shall be for the period of default. Interest is mandatory in nature as far as the service tax is concerned. The calculation of interest under service tax law is different and considers the actual delay in terms of days i.e. the calculation is not similar to the one followed under the Income Tax law or the K-VAT law.

CENVAT Credit scheme

The service provider providing taxable services is entitled to avail cenvat credit of the service tax paid on input services in addition to the excise duty paid on inputs and/or capital goods provided they are used for providing such taxable service. This credit can be used by the service provider to set off the liability on his services. This would reduce the outflow in cash on account of service tax and more importantly avoids cascading effect of taxes.

Eg – If the liability is Rs. 10000/- and the accumulated credits is Rs. 4500/-, the service provider can set off his liability with the accumulated credit and is required to pay the balance of only Rs. 5500/- in cash.

The credit of service tax on input services (eg. Telephone service, management consultancy, professional services, security service etc) would be available on accrual basis However, the

credit of excise duty [additional duty of customs(CVD)] either on inputs or capital goods is available on receipt i.e. the payment to the vendor or the manufacturer is not required. The service provider would however have to be careful where the service provider provides both taxable and exempted services in which case the service provider is required to follow rule 6 of Cenvat Credit Rules 2004 for the purpose of availment.. Reversal / restriction on availment may have to be done in such cases.

Export of Services upto 1.7.2012

The services has been structured by breaking up the same into three groups/sectors *i.e.* based on the situation of immovable property, based on the performance of service and based on the location of the recipient of service. For each of the category, the common condition is the receipt of consideration in Convertible Foreign Exchange. Prior to 27.02.2010, in addition to the said condition, there was one more condition requiring the service provider to provide service from India and service receiver to use the same outside India.

The service provider who exports his service in accordance with the Export of Service Rules 2005 would not have to pay service tax on such exports. He would also have the option of going in for the rebate of service tax paid on taxable service exported or service tax paid on input services or excise duty paid on inputs used in providing such taxable services exported in accordance with Rule 5 of Export of Service Rules 2005 and the notifications specified thereunder. [Notification 11 0r 12 of 2005] Another option would be that of refund in accordance with Rule 5 of Cenvat Credit Rules 2004.

Filing of returns

The service provider is required to submit half-yearly returns in Form ST-3 or Form ST-3A (in case of provisional assessment) as the case may be with relevant copies of Form GAR 7, in triplicate by the 25th day of the month following the end of the relevant half-year in terms of Rule 7 of Service Tax Rules 1994. From 01.04.2010 e-filing of return is mandatory for the service providers who have paid central excise duty or service tax of Rs. 10 lakhs or more in the preceding financial year, whether by cash or debit in Cenvat credit account or both vide circular No. 919/09/2010-CX dated 23.03.2010. Form ST-3A is to be used where a deposit is to be made provisionally (i.e. the assessee has opted for provisional assessment). The returns are to be filed for the half year ending 30thSeptember and for the half year ending on 31st March. This year the time for filing of the return has been extended to 19th January 2013 due to the need for different information consequent to negative list.

Where the assessee makes a mistake in the return, the revised return in Form ST 3 should be submitted within ninety days and not three months from the date of submission of the return under Rule 7.

Where the filing of the return is delayed, the service provider would have to pay a sum to the credit of the central government as follows under Rule 7C of Service Tax Rules 1994 –

- Rs. 500 for a delay of 15 days from the prescribed date
- Rs. 1000 where the delay is between 15 and 30 days from the prescribed date
- Rs. 1000+ Rs. 100 per day of delay where the delay is beyond 30 days from the prescribed date but not exceeding Rs. 2000 in terms of Section 70.*(Now the maximum penalty is increased from Rs 2000 to 20,000)*

Rule 7C empowers the Central Excise Officer to reduce or waive the penalty for delayed filing of return, where the gross amount of service tax payable is nil and there was sufficient cause for not filing the return.

Section 71enables the Board to notify a scheme for preparation and filing of service tax returns through a class of persons known as Service Tax Return Preparer authorized for this purpose. The assessee could thus utilize the services of STRP where he has any difficulty in filing the returns. The Government has framed the Service Tax Return Preparer Scheme 2009 notified through Notification 7/2009 ST dated 03.02.09, a copy of which can be obtained on the website www.cbec.gov.in.

Recently with an MOU with CBEC and ICAI, Chartered Accountant can register as a Certified Filing Center and can offer the service of filing service tax and excise returns online through ACES website. [visit icai.org]

Assessment

The assessee is required to assess the tax payable by him and pay the same on monthly or quarterly basis as applicable. In other words, what is envisaged here is self-assessment. Rule 6(4) of Service Tax Rules 1994 enables the service provider to opt for payment on provisional basis where there is a difficulty in ascertaining the amount to be paid. For this, the service provider shall make an application to ACCE/DCCE. The assessment would be finalized at a later date. The departmental authorities can call for further information as they may require from time to time. The provisions of Central Excise Rules would apply here in relation to such provisional assessment with the exception as to requirement of furnishing of bond.

Is best judgment assessment possible under service tax?

Section 72 authorizes the Central Excise Officer to make such assessment after allowing the assessee to represent his case, where the assessee has failed to make service tax returns or assess the tax properly. Thus where the assessees fail to assess tax properly or fail to furnish return itself they could face the risk of the department calling for a best judgment assessment. However these assessments are expected to lead to substantial litigation.

Provisions as to recovery

As per section 73 of Chapter V of Finance Act 1994 as amended, where the service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer handling service tax can serve a Show Cause Notice on the person chargeable with service tax as to why he should not pay the amount specified in the notice. The notice shall state the amount involved.

This can be done within one year from the relevant date unless such short payment/ non-levy/refund was by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of the provisions of Chapter V or rules made there under with the intent to evade payment of service tax. In such cases, the time limit would be five years.

There is an option of completing the proceedings by payment of the tax amount along with interest u/s 75 before issue of notice in cases pertaining to fraud, collusion etc., by paying the said tax and interest along with penalty of 25% of the service tax specified in the notice within 30 days from the date of communication of notice. *In the Finance Bill 2011, the said benefit was excluded with respect to closure of proceedings after payment of penalty under section 73(1A))*

However revised benefit has been proposed by introducing section 73(4A) by virtue of which, where true and complete records are available in the specified records and the assessee during the course of audit, verification or investigation pays the tax, interest, penalty. The extent of penalty in this regard is 1% P.M of the tax amount, for the duration of the default upto a maximum of 25% of the tax amount. It is important that the amount of tax is paid before the issue of notice and information of the same is provided to the central excise officer of such payment in writing.

It is further provided that the central excise officer may determine the amount of service tax, which is unpaid by the assessee and the central excise officer in this scenario has powers to proceed for recovery by issuing a show cause under section 73(1)

"Specified records" means records including computerized data, as are required to be maintained by the assessee in accordance with any law for the time being in forced or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as specified records.

Provisions pertaining to penalty

Section 76 of the Finance Act provides for a penalty in case of failure to pay tax, of an amount equal to the higher of -

1. A sum of not less than rupees one hundred for every day during which the failure to pay tax in accordance with section 68 continues, or
2. One percent of the tax for every month, starting with the first day after the due date till the date of actual payment of service tax due.

The total amount of penalty cannot exceed 50% of the amount of service tax payable.

Section 77 deals with penalty for a contravention where no specific penalty is prescribed. The penalty in cases of fraud, collusion, willful misstatement, suppression of facts or contravention of any provision with an intention to evade the payment of service tax would be u/s 78. (Section 78 is being amended to provide that in a case where penalty u/s 78 is imposed, penalty for failure to pay service tax u/s 76 shall not apply). Further an explanation to section 73(3) is being added whereby if the amount of service tax and interest is paid by the assessee before the issue of show cause notice then no penalty is leviable under any of the provisions of this Act or the Rules made thereunder.

Collecting amounts representing service tax

Any person collecting any amount as representing service tax or in excess of the service tax liable, or collecting service tax on transaction not liable for service tax has to depositsuch amounts with the Central Government as per section 73A. The provision for the interest on the same is governed by section 73B.

Provisions pertaining to Appeals

Section 85 of the Finance Act, allows an assessee or revenue aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise, to appeal to the CCE (Appeals) within sixty days wef 1.4.2013 [earlier it was three months] from the date of receipt of the decision of the authority.

Rule 8 of Service Tax Rules 1994 requires the appeal to be made on Form ST-4 in duplicate. A copy of the order sought to be appealed against is also to be filed with the appeal.

Section 86 allows the assessee or revenue to make an appeal to the Appellate Tribunal against the order passed by either the CCE or CCE (Appeals). The appeal is to be filed within three months of the date on which the order sought to be appealed against is received by the assessee and as per Rule 9 of Service Tax Rules 1994, would be filed on Form ST-5 and would be in quadruplicate. Even orders passed either under section 73 dealing with recovery or a revision order of the CCE u/s 84 or order adjudging penalty u/s 83A may be appealed against.

As far as appeals to High Court and Supreme Court are concerned the provisions of sections 35G and 35L of the Central Excise Act 1944 would apply. The appeal to High Court can be made against the order of the Appellate Tribunal once the High Court is satisfied that the case involves a substantial question of law. The appeal shall be within 180 days from the date on which the order appealed against is received by the assessee. The fee shall be rupees two hundred.

The appeal against the order of the High Court shall be with the Supreme Court once the High Court certifies the case to be one that is fit for appeal to Supreme Court. This may be done on its own motion or on an application by the assessee once its judgment is delivered. The decision of the Supreme Court shall be final and binding on the parties concerned. The practice of the revenue department to continue to raise protective demands or litigate a matter much after its judicial confirmation should be discouraged as it amounts to a harassment to the tax compliant service providers/ receivers who contributes more than 80% of the total collections of taxes whether in direct or indirect taxes. It would also embrace the global best practice of trusting the tax payer both in word and spirit reduces the cost of tax administration.

SERVICE TAX - LEVY

Levy and charge of service tax

Earlier, Service tax was applicable to defined service providers, providing defined taxable services, to defined service receivers, in India. The tax was liable on the gross amounts charged for such service less the deductions and exemptions set out therein. Now, the Service Tax law has undergone a sea change with the term 'service' by itself being defined and all the activities which satisfy the definition criterion fall under the service tax net . A list of 17 activities called the negative list is provided which are completely outside the service tax net . Most of the earlier exemption notifications have been scrapped and a mega exemption notification consisting of 39 items is given. Thus one has to check the negative list, then the exemption notification and if any activity is not specified therein, it is a taxable service. The levy now is still on the provision of service, but for crystallization we have to check the Point of Taxation Rules, 2011.

What is Service?

A new Section 66B has been introduced in this Finance Act and 'Service' has been defined in clause (44) of the new section 65B. The definition of service has be divided into three parts i.e. 'means part', 'inclusive part' and 'exclusion part'.

Means part of the definition

"Service" means any activity carried out by a person for another for consideration. The definition of service has the following essential requirements:

a. It has to be any activity,
b. Such activity has to be carried out by a person,
c. Such person has to carry out the same for another person,
d. The activity has to be for a consideration

Inclusive part of the definition

Inclusive part of the definition has impact of enlarging the scope of the definition. It gives wider meaning to words or phrases in the statute. When it is used in words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact, but also those things which interpretation clause declares they shall include. The definition of service also includes the declared service in the inclusive part. This is done to avoid ambiguity in so far as the activities mentioned under declared services which could lead to continued litigation. However the contradiction between the definition part and the inclusion part as well as the possible variance with the Centres powers laid down under the Constitution of India

are likely to see disputes continuing.

Specific exclusions from the definition of service

The definition of 'service' as provided in Section 65B (44) specifically excludes certain activities which would not be considered as service. That is to say that these activities when performed/executed shall be out of scope of the service tax levy.

(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) 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;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

There are three explanations inserted after the means, inclusive and exclusive limbs of the definition of service. They are as follows:

Explanation 1 stipulates that the definition **shall not apply to**

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2 provides that

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 is an exception to the part that there have to be 2 distinct persons for provision of service.

(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 stipulates that

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.

Classification of Service

Earlier, the classification of the service provided should have been with reference to the specific coverage within the 119 alternatives. It was possible that the services provided by one service provider may appear to fall under more than one category of specified services. It was possible that one service provider maybe providing numerous individual services or combined services. He was required to register under all of them.

Where the entry was not clear or more than one classification appeared to be correct, then reference was to be made to Section 65A for the rules of interpretation.

Thus, a lot of confusion prevailed here and also litigation.

Now, Section 65A has been replaced with Section 66F.

Section 66F has laid down the principles of classification of services.

Clause 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.

Clause 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.

Clause 3: Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely:—

(a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;

(b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Explanation.— For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services".

Exemptions

Earlier, there were many notifications general exemptions as well as exemptions relating to specific category of services. Now all the exemptions have been combined into a mega notification No. 25/2012. The exemption notification is to be examined carefully as non-following of the substantive conditions could lead to a denial of the benefit.

Other Major Change:

The Finance Act has introduced joint charge along with reverse charge mechanism for dual responsibility to pay service tax. This is to ensure more chaos along with enhancing the treasury!

Place of Provision Rules, 2012 have been introduced replacing the erstwhile Export of Services Rules, 2005 and the Taxation of *Services* (Provided from Outside India and Received in India) *Rules*, 2006. These rules have been put in place for the purpose of the determination of the place of provision of services.

DECLARED SERVICE

Declared Services

Declared Services are defined under Section 65B (22) of the Finance Act, 1994 to mean any activity carried out by a person for another person for consideration and declared as such under Section 66E of the Finance Act, 1994. It means for a service to come under the category of declared services, it has to satisfy two basic conditions conjunctively

- it must be an activity by one person to another for consideration
- it must be specified(i.e. declared) under section 66E

Need for Declared Service:

The definition of service in the first instant is very wide to cover any transaction done for a consideration. However, there exist few activities which would overlap with the other levies of state with a marginal difference, thereby questioning the constitutional validity of the levy under service tax. In some cases there may be a doubt whether that activity could possibly called a service at all. To rest the doubt about the validity of a transaction to be considered as service, the authorities have intended to declare such activities to be a service. To give an instance, the first declared service "renting of immovable property service" was challenged as to whether it was a "service" as well as the competence of the Union to levy the tax on a property, which is a subject to state governance. Similarly most of the declared services were challenged. For all events and purposes these transactions shall be deemed to be service.

The following nine activities have been specified in section 66E:

a. renting of immovable property;
b. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
c. temporary transfer or permitting the use or enjoyment of any intellectual property right;
d. development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
e. agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

f. transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
g. activities in relation to delivery of goods on hire purchase or any system of payment by installments;
h. service portion in execution of a works contract;
i. service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

Each individual declared service is explained below:-

1. Renting of Immovable Property

- Renting of Immovable property has been taxed under the earlier tax regime vide Section 65 (105) (zzzz). Renting of immovable property has been brought into tax net vide Notification No. 23/2007-ST dated 01.06.2007.
- Renting means facility allowing, permitting or granting access, entry, occupation, use.
- Such facility has to be in an immovable property, either wholly or partly
- Such facility may be provided with or without the transfer of possession or control
- The same specifically includes letting, leasing, licensing or other similar arrangements in respect.
- Renting in negative list(S.66D) and Exemption(25/2012-ST)

Renting under Negative list:

Services provided by way of renting or leasing of following are covered by the negative list

- Agro Machinery
- Vacant land with or without a structure of incidental to its use

Exemptions

- Renting of precincts of a religious place meant for general public (Notification 25/2012-ST)
- Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent (Notification 25/2012-ST)

- Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility. (Notification 25/2012-ST). This has been omitted by Finance Act 2013 wef 1.4.2013.
- Thus, parking charges collected at cinema theatres, malls etc, is exempted from service tax as it falls under services by way of motor vehicle parking to general public. After amendment, these would be liable to service tax.

Covers

- Renting for temporary purpose like marriages or other social functions because it includes renting without transfer of possession or control,
- Permitting use of property for vending/dispensing machine
- Allowing erection of tower
- Renting for entertainment or sports
- Renting of theatres by owners to film distributor

2. Construction of Complex

Construction of Complex covers the following

- Construction of a complex, building, civil structure or part thereof;
- Construction of complex or building intended for sale to a buyer either in part or full before issue of completion certificate by competent authority.

Meaning of Construction:

The expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure which has been defined by way of explanation to the subject declared service. Since, the definition is defined in the inclusive manner, the meaning as understood by trade assumes importance. 'Construction' means 'Make by fitting parts together; build; erect' [Oxford English Dictionary]

Taxable Activity:

Construction of Complex, Building, Civil Structure:

The construction of a complex which means a group of buildings or construction of independent building or construction of civil structure or part of the complex, building and civil structure is liable to service tax. This covers all the activities of sub-contractors who provide the service to

the builder or developer or promoter pertaining to construction and also the contractor who is engaged directly by the service receiver pertaining to the construction activity.

Including a complex or building intended for sale to buyer, wholly or partly:

This limb of the definition intends to cover those services (deemed) provided by the builder/ developer/promoter in relation to building or complex which is for sale to buyer wholly or partly. This is to bring the deeming fiction into play whereby the builder/promoter/developer is liable for service tax when any amount is received from the prospective buyer (prior to completion certificate), where earlier they have claimed that the services are not provided to buyer and to themselves consequently escaping service tax.

Except where the entire consideration is received after issuance of completion certificate by the competent authority:

This limb of the definition assumes importance since it plays a significant role in determining the taxability of the activity. The entire activity of the builder/developer/promoter shall be deemed to be service only if any amount has been received prior to issuance of completion certificate by a competent authority. If the entire amount is received post issuance of completion certificate, the activity shall be a mere transfer of title in immovable property and thereby not falling in the definition of service.

Competent authority: This has been defined by way of Explanation to mean the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non requirement of such certificate from such authority, from any of the following, namely:—

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(B) Chartered engineer registered with the Institution of Engineers (India); or

(C) Licensed surveyor of the respective local body of the city or town or village or development or planning authority;

Related entries given in Notification No 25/2012-ST dated 20.06.2012 (discussed later)

Food for thought

1. **If there are more than 9 residential units under the same compound but with separate plan sanction, is such construction of units liable?**

The concept of more than 12 residential units is no more relevant. If the construction is pertaining to more than 1 residential unit, the entire construction work shall be taxable.

2. **If the construction of residential quarters is undertaken for the employees of the factory, is there a liability under this entry?**

   Yes, there shall be liability under the new scheme because the term 'personal use' has been deleted and the exemption for residential complex pre-dominantly for self- use has been extended only to government or local authority or use of their employees.

3. **Whether the builder constructing with his own materials is covered?**

   Yes, the builder providing service with his own materials is covered. This would be treated as works contract.

4. **If Commercial complex is constructed with agreement to sell, whether it would be taxable?**

   Comments: Despite the nature of agreement entered by the parties, if there is any consideration received from the buyer prior to issuance of completion certificate by competent authority, it shall be taxable in light of being declared as Service vide Section 66 E.

3. Temporary transfer or permitting the use or enjoyment of any intellectual property right

IPR covers the following:

- There should be an intellectual property right
- Such right is being temporarily transferred to the service receiver or
- It is permitting the use or enjoyment of such right

The phrase Intellectual property right has not been defined under the Finance Act. This has to be understood as per normal parlance as per intellectual property rights includes the following:

- Patents
- Copyrights
- Trademarks
- Designs
- Any other similar right in an intangible property.

Taxable Activity:

There shall be a charge of service tax when a person assigns or agrees to assign right to use of intangible property to another person for consideration, where the assignment is not of permanent transfer.

Temporary Transfer:

Transfer, whether permanent or temporary shall depend upon the time period for which the right in the property subsists. **For example**, as per Section 26 of Indian Copyright Act, 1957, the right in the cinematographic film shall be subsist for the period of 60 years from the beginning of the calendar year next following the year in which the film is published. Therefore, if the transfer of the property in the right is for period exceeding 60 years, the intention can be safely concluded to be a permanent transfer and if it is for a period less than 60 years, it shall be a temporary transfer and subjected to service tax.

Exemption

Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957, relating to original literary, dramatic, musical, artistic works is exempt (Not. 25/2012). By Finance Act 2013, there is an exemption to temporary transfer or permitting the use or enjoyment of a copyright of cinematograph films for exhibition in a cinema hall or cinema theatre;

Food for thought

1. **Mr. M holds the IPR of a product and the same is temporally transferred to Mr. S, if Mr. S allows Ms. M to use the same, is it liable for service tax?**

   The taxable service required the service provided by the holder of IPR and not the owner of the IPR. As long as Mr. S holds the IPR at the time of letting it for use by Ms. M, he would be liable for service tax.

2. **Whether granting of the loom right is taxable?**

   Loom right is also an intangible property and hence allowing the same to be used is also taxable irrespective of it being recognized or not recognized under the law.

4. Development etc of IT software

It covers the following:

- The activity performed has to be only development, design, programming, customization, adaptation, upgradation, enhancement or implementation
- Such activity has to pertain to Information Technology Software.

The phrase 'Information Technology Software' has been specifically defined in the Finance Act vide Section 65B(28) to mean any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment.

Food for thought

1. **Would providing advice, consultancy and assistance on matters relating to Information Technology Software be chargeable to service tax?**

   These services may not be covered under the declared list entry relating to Information Technology Software. However, such activities when carried out by a person for another for consideration would fall within the definition of service and hence chargeable to service tax if other requirements of taxability are satisfied.

2. **Whether the canned or off the shelf software are covered?**

   The taxable service here is in relation to development of the software for other person. In the case of canned software the development is undertaken for oneself and after completion the sale is affected. In such case there is no separate service receiver therefore the levy fails. However the same is covered under the manufacture and are governed under central excise provisions.

3. **Whether repairs and maintenance of software is covered?**

   Even though not specifically covered by the entry, it would be taxable since it is an activity done by person to another person for a consideration.

4. **Whether the software licenses are covered?**

   If the software works on the license basis, then it shall be transfer of right to use goods and the same is taxable under another declared service entry namely "transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods"

5. Non Compete Fee

It covers

- Agreeing to the obligation to refrain from an act,
- Agreeing to tolerate an act or a situation
- Agreeing to do an act

Agreeing to the obligation to refrain from an act: Where a person undertakes an obligation not to do an act on the request of the other person, it means that the first person has agreed to refrain from doing that act. It is important that the first person should undertake the obligation in return of the request or promise by another.

For example:

i. In a merger and acquisition deal, promoter of selling company agrees not to do similar business for an agreed period. Consideration paid for such non compete fees would attract service tax.

Agreeing to tolerate an act or a situation: Where a person has to tolerate a particular situation or act and consideration is received for such situation, it would also be liable to service tax. For example, a person gives personal guarantee to a bank against loan advanced to a borrower. Guarantor undertakes to honour outstanding dues.

Agreeing to the obligation to do an act: Where a person undertakes an obligation to do an act in return of provision of services, consideration received for agreeing to the obligation would be covered in declared service. For example is given in TRU letter that if A agrees to construct 3 flats for B on land owned by B and in return B agrees to provide one flat to A without any monetary consideration, then the act of B for undertaking the obligation to provide constructed flat would be liable to service tax.

6. Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods

This is covered under deemed sale as per Article 366(29A) of the Constitution. The following are the essentials to be satisfied for falling under the service category:

- There has to be goods (whether tangible or intangible)
- Such goods would be transferred from one person to another

- Such transfer is by way of hiring or, leasing or licensing or in any such manner
- Such transfer would be without transfer of right to use such goods

Situations to decide whether the activity comes under transfer of right to use goods or not

- Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods is declared service under section 66F.
- A car is given on hire by a person to a company along with a driver on payment of charges on per month/ mileage basis – Right to use is not transferred as the car owner retains the permissions and licenses relating to the cab. Therefore possession and effective control remains with the owner. The service is therefore covered in the declared list entry.
- Hiring of bank lockers – The transaction does not involve the right to use goods as possession of the lockers is not transferred to the hirer even though the contents of the locker would be in the possession of the hirer. (State Bank of India and Others vs State of Andhra Pradesh 1988 (70) STC 0215)
- Hiring out of vehicles where it is the responsibility of the owner to abide by all the laws relating to motor vehicles – No transfer of right to use goods as effective control and possession is not transferred (Allahabad High Court judgement in Ahuja Goods Agency Vs. State of UP)
- Hiring of audio visual equipment where risk is of the owner - No transfer of right to use goods as effective control and possession is not transferred.

Food for thought

1. **In case the Machinery is provided to customer along with operator, whether such transaction is liable for service tax?**

   When the machine is operated by the person of service provider, the control and procession is not transferred then the right to use to property lies with the service provider and hence such transaction is not one of sale. The taxable service includes supply of machinery and therefore the same is taxable.

2. **Where the machinery is provided along with the operator would it be liable?**

   Yes as the control and possession of the machinery is not transferred to the customer the activity is a service and not a transfer of goods.

7. Delivery of goods on hire-purchase or any system of payment by installments

This is covered under deemed sale as per Article 366(29A) of the Constitution. Section 2 of the Hire Purchase Act, 1972 defines a 'hire purchase agreement' as an agreement under which goods are let out on hire and under which the hirer has the option to purchase them in accordance with the terms of the agreement and included an agreement under which –

i. Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical installments, and
ii. The property in the goods is to pass to such person on the payment of the last of such installments, and
iii. Such person has a right to terminate the agreement at any time before the property so passes;

Key ingredients of the deemed sale category of 'delivery of goods on hire-purchase or any system of payment by installments', therefore are

- Transfer of control and possession (and not just of custody)

The hirer has the option or obligation to purchase the goods in accordance with the terms of the agreement.

Food for thought

1. **What is the difference between a normal hiring agreement and a hire-purchase agreement?**

   In a mere hiring agreement the hirer has no option to purchase the goods hired and the risks and rewards incidental to ownership of goods remain with the owner and are not transferred to the hirer. In a hire-purchase agreement the hirer has an option or an obligation to purchase goods.

2. **If delivery of goods on hire purchase or any system of payment on installment is deemed to be sale of goods what are the activities in relation to such delivery which are covered in the declared service?**

   It has been held by Supreme court in the case of Association Of Leasing & Financial Service Companies *Vs* Union Of India [2010 (20) S.T.R. 417 (S.C.)] that in equipment leasing/hire-purchase agreements there are two different and distinct transactions, viz., the financing transaction and the equipment leasing/hire-purchase transaction and that the financing transaction, consideration for which was represented by way of interest or other charges like lease management fee, processing fee, documentation charges and administrative fees, which

is chargeable to service tax. Therefore, such financial services that accompany a hire-purchase agreement fall in the ambit of this entry of declared services.

8. Service portion in execution of Works Contracts

This is covered under deemed sale as per Article 366(29A) of the Constitution. A contract to be covered under the definition of the works contract under service tax, the following conditions would be the essential criteria

- There would be a contract for provision of service
- During the provision of such service, there is involvement of transfer of property in goods which are leviable to VAT and
- The scope of the contract has to be essentially be for construction, erection, commissioning, installation, completion, fitting out, repairs, maintenance, renovation, alteration or any other similar activity of;
- Such activity has to be either on movable or immovable property

Valuation in Works Contract Service

Broadly, there are two methods for valuation of service

i) Value of service = Gross amount – value of property in goods

ii) If not (i) value of service shall be

- For execution of original works => 40% of total amount shall be value
- For maintenance or repair or reconditioning or restoration or servicing of any goods => 70% of total amount shall be value
- For other works contracts => 60% of total amount shall be value

The Works Contract Composition scheme has been scrapped.

In the above cases, CENVAT credit cannot be availed of excise duty paid on goods, the property of which is transferred to customer. Thus, CENVAT credit cannot be availed on excise duty paid on building material like cement, steel, tiles, fittings, etc.

Food for thought

1. **Would labour contracts in relation to a building or structure treated as a works contract?**

No. Labour Contracts do not fall in the definition of works contract. It is necessary that the contractor brings in materials used for the works and there should be transfer of property in goods involved in the execution of such contract which is leviable to tax as sale of goods. Pure labour contracts are therefore not works contracts and would be leviable to service tax like any other service and on full value.

2. **Would contracts for erection commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise be treated as a works contract?**

   Such contracts would be treated as works contracts if –

   - Transfer of property in goods is involved in such a contract;

9. Supply of Food or other articles of Human Consumption

The following are the pre-requisites to fall under this entry:

- There is an activity
- Activity involves an element of service
- Such activity is in relation to goods
- The goods being food or any other article for human consumption or
- Any drink whether intoxicating or not and
- This is supplied in any manner as a part of such activity.

It is to be noted that the activity of supplying food or drink has the case may be, would also necessarily have the service element has a part and parcel of such activity. Where only goods are sold during the activity of selling of food and no service element is involved, it would not be covered by the declared service. Therefore activities where mere food is supplied but no service is offered has a part of supplying of food, it would not be liable to service tax.

For Example: Pick up or free home delivery made for which no separate charges are levied from the customer.

Valuation

Valuation is broadly classified in to two category;

Option 1: The value of service shall be determined as per Rule 2C of the Service Tax (Determination of Value) Rules, 2006 which provides as under:

S. No.	Description	Percentage of total amount on which service tax leviable
1.	Service involved in the supply of food or any other article of human consumption or any drink at a restaurant	40
2.	Service involved in the supply of food or any other article of human consumption or any drink as outdoor catering service	60

So where service provider is a restaurant, the value for the purpose of charging of service tax would be 40% of the gross amount charged. In case of outdoor caterer, chargeable value will be 60% of the gross consideration.

Meaning of outdoor caterer: Outdoor caterer is not defined under the Act. However, as ordinarily understood, it means a person providing food and drink outside the place of its regular business for some social or formal event.

Option 2:

The provider of taxable services other than covered above i.e. restaurant or outdoor caterer when engaged in the supply of food or any other article of human consumption or any drink in a

- Premise including
- Hotel
- Convention centre
- Club
- Pandal, Shamiana or
- Any other place specially arranged for organizing a function.

Then he would charge service tax on 70% of the total amount received for the service provided by way of outdoor catering service.

Total Amount: For the purpose of Option 1 and 2 "Total Amount" would include the following:

- Value of material supplied including
- Value of free material and
- Value of free service

- Either under the same contract or any other contract

But would not include:

- Value added tax levied on the sale of food and drinks.

Food for thought

1. **In case the place for the cafeteria is provided by an IT park free of cost. Employees of various companies situated in the said IT park buys the food from the cafeteria, whether such service is taxable?**

   Cafeteria facility provided by IT park to employees of various companies situated in the said park is in the nature of food joint facility. It is covered by the exemption notification 25/2012-ST subject to that there is no AC facility accompanied by license to serve liquor. Wef 1.4.2013, even if there is AC facility in any part of establishment, it would be liable. The exemption would be restricted to restaurant, eating joint or mess without AC facility.

2. **Whether the contract for cooking in a factory or office would be covered under this service?**

   The contract for cooking in a factory or office would generally be not covered by the declared services as the service provider engaged in the cooking activities is not engaged in the sale of food. However, if the activity of cooking satisfies the definition of service, it would be liable to service tax though not under this declared service.

3. **Whether AC restaurants without liquor license would be liable to service tax?**

   Yes, wef 1.4.2013 it would be liable to service tax. .

4. **In case the AC facility is provided by the restaurant only in case of summer, then would the service provided by restaurant in winter attract service tax?**

   The exemption is available only when restaurant does not have AC during any part of the year. Therefore service tax would be payable even for the service provided in the winter, when AC may not be switched on.

5. **Whether AC restaurant not having liquor license allowing the consumption of liquor at the risk of customer would be liable for service tax?**

   Wef 1.4.2013 as long as the restaurant has AC facility in any part of establishment during any part of the year would be liable to service tax .

Pointers for practice

- The new law needs frequent reading of the bare provisions as well as articles on the same as it is not free of vagueness.
- The Education guide could also provide a degree of revenue view of the subject.
- The professional here should have to have a fair idea as to the provisions prevailing under the VAT law of the concerned state if he is really to add value to his client's business. This would be so, as the more appropriate course of action is to be selected from a given set of alternatives. This would involve the study of deductions available for labour as per the VAT law, composition benefits, deduction for materials transferred under service tax, conditions to be met in order to claim deductions etc.
- The professional would have to go through the agreements the client has with his customers so that the essence of the same could be understood. This is critical in order to determine the liability or the absence of one under service tax.
- It may also be important to examine the taxation of the incoming services/ goods as well as the customers' liability for central excise or service tax.

NEGATIVE LIST

Background

In the earlier system, only the services specified in clause (105) of section 65 of the Finance Act, 1994 were taxed under the charging section 66. In the new system, all services, other than the services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under section 66B.

Negative list:

W.e.f 01.07.2012 there is sea change in the way services are to be taxed. Taxation would be based on what is popularly known as "Negative List of Services". This is a comprehensive method of taxation normally adopted by advanced/ developed countries. This method does not differentiate between the organized and unorganized sector and covering all the service providers. Developing countries where the economy has not developed/ population not literate avoid this method of taxation to avoid the disputes due to large scale non compliance on account of ignorance.

We analyse the negative list of services as under:

1. Services provided by Government or Local authority:

Most of the services provided by the Central or State Government or Local authorities are in the negative list except the following:

a) Services provided by the Department of Posts by way of speed post, express parcel post, life insurance and agency services carried out on payment of commission on non government business;

b) Services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;

c) Transport of goods and/or passengers;

d) Support services, other than those covered by clauses (a) to (c) above, to business entities.

The service tax on support services is to be paid by the service recipient business entity under reverse charge mechanism.

What is meaning of Government?

'Government' has not been defined in the Act, the definition of 'Government' as contained in the General Clause Act, 1897 would be applicable as per which 'Government' includes both Central and State Government. Further as per the General Clause Act 1897, State includes Union Territory. 'Government' would also include various departments and offices of the Central or State Government or the U.T. Administrations which carry out their functions in the name and by order of the President of India or the Governor of a State.

What is meant by Local Authority?

Local authority is defined in 65B and means the following:-

- A Panchayat as referred to in clause (d) of article 243 of the Constitution
- A Municipality as referred to in clause (e) of article 243P of the Constitution
- A Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund
- A Cantonment Board as defined in section 3 of the Cantonments Act, 2006
- A regional council or a district council constituted under the Sixth Schedule to the Constitution
- A development board constituted under article 371 of the Constitution, or
- A regional council constituted under article 371A of the Constitution.

What is meant by Support Services?

Support services have been defined in section 65B of the Act as 'infrastructural, operational, administrative, logistic marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and would include advertisement and promotion, construction or works contract, renting of movable or immovable property, security, testing and analysis'. Thus, services which are provided by Government in terms of their sovereign right to business entities are not support services e.g. grant of mining or licensing rights.

Issue

Whether subsidy granted by Government for setting up of business is taxable?

Subsidy granted by business is generally in the nature of open offer to large public. Any person fulfilling the conditions of the subsidy may be granted the subsidy. There is no counter obligation to the Government by the business receiving the subsidy. Complying with the conditions of the

subsidy is merely for the purpose of gaining own business advantage. There are no services rendered to Government which can be made liable to tax.

Whether CFTRI (Central Food technological Research Institute) undertaking testing and analysis services for prelaunch of edible items is covered by support services?

It is the statutory obligation of the CFTRI to carry out the testing of edible items before launch in the market. The activity performed by CFTRI is not outsourced to them by business entity and is not covered by the first limb of the definition of the support services. However, testing and analysis is specifically covered by the inclusive part of the definition and accordingly is in the nature of support service.

2. Services provided by Reserve Bank of India

All services provided by the Reserve Bank of India are in the negative list. Services provided to the Reserve Bank of India are not in the negative list and would be taxable unless otherwise covered in any other entry in the negative list.

3. Services by a Foreign Diplomatic Mission Located in India

Any service that is provided by a diplomatic mission of any country located in India is in the negative list. This entry does not cover services, if any, provided by any office or establishment of an international organization.

4. Services relating to agriculture

The services relating to agriculture that are specified in the negative list are services relating to

- agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing; Seed word is omitted by Finance Act 2013. Now entry extended to all kinds of testing in relation to agricultural produce and not restricted to seed testing alone.
- supply of farm labor;
- processes carried out at the agricultural farm including tending, pruning, cutting, harvesting, drying cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but makes it only marketable for the primary market;
- renting of agro machinery or vacant land with or without a structure incidental to its use;

- loading, unloading, packing, storage and warehousing of agricultural produce;
- agricultural extension services;
- services provided by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of agricultural produce;

Further the activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry is also included in the definition of agriculture. The plantation crops like coffee, tea are also covered in agricultural produce.

What is the meaning of 'agriculture'?

'Agriculture' has been defined in the Act as cultivation of plants and rearing or breeding of animals and other species of life forms for foods, fibre, fuel, raw materials or other similar products but does *not include rearing of horses*.

What is agricultural produce?

Agricultural produce means any produce of agriculture on which either no processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. It also includes specified processes in the definition like *tending, pruning, grading, sorting* etc. which may be carried out at the farm or elsewhere as long as they do not alter the essential characteristics.

For example: Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case) therefore, it does not qualify as agricultural produce.

Issue

Whether letting of shed for storage of agricultural produce is also covered?

Yes, In terms of the specified services relating to agriculture 'leasing' of vacant land with or without structure incidental to its use' is covered in the negative list.

Whether agriculture operations carried out in rural area are only covered under negative list?

No. There is no condition that the agriculture activities should be performed in rural area only.

Whether activities of horticulture, animal husbandry or dairying etc are covered by the

agriculture operations?

Yes. These activities are also in the nature of agriculture only. Animal husbandry and dairying are specifically used in the definition of agriculture.

Whether activities of fishing are also covered under agriculture as the activities are not carried out on the land?

Yes. There is no requirement that the activities should be performed on land only.

5. Trading of Goods

Transfer of title of goods is one of the essential conditions for a transaction to come under the ambit of trading of goods. However, the services supporting or ancillary to the trading of goods would not come under the above item of Negative List.

What is covered?

- Futures contracts would be covered as these are contracts which involve transfer of title in goods on a future date at a pre-determined price.
- In commodity futures, actual delivery of goods does not normally take place and the purchaser under a futures contract normally offsets all obligations or closes out by selling an equal quantity of goods of the same description under another contract for delivery on the same date. There are, therefore, two contracts of sale/purchase involved which would fall in the category of trading of goods.

What is not covered?

- Activities of a commission agent or a clearing and forwarding agent who sell goods on behalf of another for a commission would not be included in trading of goods.
- Auxiliary services relating to future contracts or commodity futures would not be covered in the negative list entry relating to trading of goods.

Issue

Whether service tax is applicable when there is a right to use the goods given by X to Y in exchange for a consideration?

No, as it is a transfer of right to use goods. This is specifically liable to VAT. There is no service involved in same.

Whether the lump sum single contract for sale of goods followed by installation is covered in negative list?

When it is a single contract, a view is possible that the installation charges collected could be treated as a part of the composite contract, the dominant nature of which is to make a sale of goods. However, the entry of "service portion of works contract" in declared services would cover such transactions.

Whether the transit sale is also considered as trading?

Yes, transit sale is also considered as trading in goods, since the emphasis here is sale and purchase and the delivery or procession of goods. The same done during the transit of goods would also be trading.

Goods sold on 'sale on approval' basis are returned back by the customer. Some usage charges are collected from the customer for the period of use of goods. Is it covered by the trading of goods?

Trading of goods means buying or selling of goods. It should result in transfer of property in goods. When goods sold are returned back by the customer, property therein does not pass on to the client. It is not covered by the definition of trading of goods and accordingly usage charges levied are liable to service tax.

6. Processes amounting to Manufacture or Production of Goods

The phrase 'processes amounting to manufacture or production of goods' has been defined in section 65B of the Act as a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or 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. The Finance Act 2013 extends scope of this entry to cover process amounting to manufacture or production under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955

This entry, therefore, covers manufacturing activity carried out on contract or job work basis provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.

Issue

Whether processing of goods resulting in manufacture of goods that are exempted or nil duty is covered?

The manufacture of excisable goods is covered in negative list irrespective of whether leviable to a rate of duty or exempted from such duty by exemption notification. It would also cover the excisable goods, which are at "nil" rate of duty**.**

Whether the process undertaken by a job worker not amounting to manufacture but used by principal in manufacturing of goods subject to 'Nil' rate of duty is covered in negative list?

Service tax would be levied on processes, not amounting to manufacture or production of goods carried out by a person for another for consideration. But there is an exemption under notification no.25/2012 ST dated 20.06.2012 for the intermediate production process as job work, where appropriate duty is paid by manufacturer. Here, appropriate rate of duty **would not** include 'Nil' rate of duty or duty wholly exempt. It could be liable.

Whether the coverage in negative list is available in case where the manufactured excisable goods resulting from process are returned to another processor and not to the principal manufacturer?

The returning of the goods to the principal manufacturer is constructive when the same are sent to another processor as per the direction of the principal. Therefore, the benefit would be available.

7. Selling of Space or Time Slots for Advertisements other than Advertisements Broadcast by Radio or Television

When is Sale of space and time Taxable?

Taxable	**Non-taxable**
Sale of space or time for advertisement to be broadcast on radio or television	Sale of space for advertisement in print media
Sale of time slot by a broadcasting organization.	Sale of space for advertisement in bill boards, public places, buildings, conveyances, cell phones, automated teller machines, internet
	Aerial advertising

Issue

Whether sale of space or time sold to advertisement agency on lump sum basis would be

covered by the negative list entry?

Any sale of space or time for advertisement purpose is covered under the negative list entry. There is no condition in the definition that the sale of space or time should be directly made to the advertiser. Bulk selling of space or time to advertisement agency for a specified period which in turn sells it to different advertisers on piecemeal basis would also be covered by the negative list entry and exempted from service tax. However, it does not include broadcasting on TV or radio.

An advertiser approaches advertisement agency to undertake advertisement activities for its company for the entire year for a contractual amount. Scope of work includes advertisement consultancy, choosing of different advertising medium, preparation of advertisement and display on mediums, purchase of space or time for display of advertisement on public places Could this be covered in negative list entry?

Composite contract is given to advertisement agency for handling entire advertisement activity for the year on lump sum basis. This would be a case of bundled services taxability of which has to be determined in terms of the principles laid down in section 66F of the Act. Here the dominant nature of the transaction needs to be determined in order to check if it could be chargeable to service tax. Here the following two services are bundled, namely, taxable service of advertising agency services in relation to design, conceptualisation, preparation of advertisement and non taxable service of display in public spaces. In the opinion of the paper writer, the dominant nature would be the services which are being offered by advertising agency related to creativity including designing, planning, preparation and display of the advertisement would be only the incidental activity. Therefore the contract would be liable to service tax.

Would services provided by advertisement agencies relating to preparation of advertisements be covered in the negative list entry relating to sale of space for advertisements?

No. Services provided by advertisement agencies relating to making or preparation of advertisements would not be covered in this negative list entry and would thus be taxable. This would also not cover commissions received by advertisement agencies from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.

How would the Service Tax liability be determined when an advertisement agency raises separate bill towards its commission and sale of space charges?

Charges received by advertisement agency towards its commission are not covered by the negative list entry. Consideration received towards sale of space or time slots for advertisements other than advertisements broadcast by radio or television would not be liable to service tax if contracted and amount invoiced separately.

Whether the sale of space in a private circulation magazine is taxable?

Sale of space or time on any medium except broadcasting by TV or radio is covered by the negative list entry. Accordingly, sale of space in private circulation magazine is not liable to service tax.

What would be the taxability of space allowed in buses and public transport system to run display of advertisement?

Not liable to service tax as per discussion in previous question.

Whether advertisement in a movie is covered under the entry "sale of space or time for advertisement"?

Advertisement in a movie may not be said to be a sale of space or time for advertisement as it is not a sale of space or time for advertisement on radio or television.

Whether purchase of slots from broadcaster and sold to advertising agency is liable to service tax?

Broadcasting not covered under the negative list entry. Accordingly, it would be liable to service tax.

Whether advertisement service rendered to Government departments is exempted from service tax?

There is no exemption on the advertisement services provided to government department. It is liable to service tax.

Whether canvassing advertisements for publishing on a commission basis is liable to service tax?

Canvassing refers to selling or reselling of space. It is not covered by the negative list and is liable to service tax.

Whether the agency commission paid by print media to advertising agency is taxable?

Sale of space or time in print media is not liable to service tax. However, commission or discount received by the advertisement agency is not in the nature of sale of space or time. It is liable to service tax.

Whether printing and publishing of yellow pages or business directory is liable to service tax?

Printing and publishing of yellow pages and business directory is not in the nature of sale of space or time for advertisement and hence are liable to service tax.

8. Access to a Road or a Bridge on Payment of Toll Charges

The negative list entry covers access to a road or a bridge on payment of toll charges. The access to National highways or state highways, which are also roads, is hence covered in this entry.

Issue

Whether services provided in relation to collecting toll charges are liable to service tax?

Where a toll collecting agency is engaged for collecting the above mentioned toll charges, then the collecting agency would be liable to pay service tax on its charges.

9. Betting, Gambling or Lottery

"Betting or gambling' has been defined in section 65B of the Act as 'putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring'. The State Government levy a betting tax on such activities.

Food for thought

Whether payment for admission to horse race as a spectator is covered under this entry?

This entry seeks to cover the amount which is involved in the betting. Therefore, the amount collected by the Club from the viewer is not covered since it does not pertain to betting. However, the same gets excluded from the levy of service tax net because this transaction is covered under the entry relating to "admission to entertainment event or access to amusement facility". Since, horse race is a sporting event, it gets excluded.

Suppose 'Mr. X' bets an amount of Rs.5000/- on a horse in a race event. The race club has only paid betting tax to the State Government on Rs. 3000/- and Rs.1000/- is charged for the entry into the race and balance transferred to a common pool account from which the prize amount is awarded. Whether entire amount is covered by this entry?

This entry reads as "services by way of betting, gambling or lottery". Mr. X with the consciousness of risk and hope has bet an amount of Rs, 5000/- and therefore in the opinion of the paper writer, the entire amount is covered by the subject entry irrespective on what amount the betting tax is paid to the state government.

Mr. Y, member of the Horse racing Club has sponsored certain amount for a particular race in the club. Is the amount paid by Mr. Y covered under this entry?

No, the betting or gambling has been defined under the Finance Act. The amount paid by the member is not with the 'consciousness of risk and hope of gain and the outcome of game' which is primary requisite to be covered under this entry. Since, the amount sponsored by Mr. Y does not have this attribute it falls into the definition of service and hence service tax is applicable.

Whether any support services rendered by the Club and certain amount collected from the members would be covered by this entry?

Any amount received by club for rendering support services does not have the attribute of consciousness of risk and hope of gain on the outcome of game and therefore , is liable to service tax.

Whether auxiliary services used to provide betting/gambling services are liable to service tax?

Auxiliary services that are used for organizing or promoting betting or gambling events, which are not betting *per se* or a part thereof are not covered in the negative list. They could be liable to service tax.

10. Entry to Entertainment Events and access to Amusement Facilities

What is' Entertainment event'?

Entertainment event' has been defined in section 65B of the Act 'as an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, such as exhibition of cinematographic films, circus, concerts, sporting events, fairs, pageants, award functions, dance

performances, musical performances, theatrical performances including cultural programs, drama, ballets or any such event or program.

What is amusement facility?

'Amusement facility' has been defined in the Act as 'a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other place but does not include a place within such facility where other services are provided'.

Food for thought

X Ltd wishes to display its products in a musical event conducted by Z Ltd. The company has brought the admission rights for the entry to the event and displayed its products. Is the income received by Z Ltd covered under this entry?

No, the entry to the event is covered only when it is for fun, recreation, pastime or enjoyment. If the person has any other motive, it would be liable to service tax. Since, X Ltd. has taken admission rights for promoting its products, this is in the nature of business and not covered under this entry.

Mr. H goes to an amusement park by paying the entry fee of Rs. 50/-. The park has various amusement facilities for which separate fee is charged. Whether the amount received by park is chargeable to service tax?

Yes. The amount is not covered by the entry. The fee only gives admission to the park but not the access to the amusement facility. Therefore, the entry fee of Rs.50/- is liable to service tax.

Mr. A goes to an amusement park by paying the entry fee of Rs. 500/-. The park has various amusement facilities for which Rs. 300/- is collected at the entry itself. Whether the entire amount received by park is chargeable to service tax?

Since Rs. 300/- is giving an access to amusement facility, it would be covered by this entry. However, the amount of Rs. 200/- is collected only for admission to the park and not for accessing any amusement facility. Therefore, Rs.200/- would be liable.

Z Ltd., owns and manages a resort wherein the property has facilities for convention center, amusement facilities, accommodation services and others. A family books the entire resort for 5 days for conducting marriage. The family has unlimited access to amusement facilities

and also uses the convention center and accommodation services. Whether the entire amount received by Z Ltd. is liable?

Yes liable as the amount received by Z Ltd. is not for the access to amusement facilities. Therefore, by applying the principles of classification as provided under Section 66F, the said amount would not be covered under this entry since the essential character of service is to hire convention centre.

11.Transmission or Distribution of Electricity

An 'electricity transmission or distribution utility' has also been defined in section 65B of the act to means the following:

- the Central Electricity Authority
- a State Electricity Board
- the Central Transmission Utility (CTU)
- a State Transmission Utility (STU) notified under the Electricity Act, 2003 (36 of 2003)
- a distribution or transmission licensee licensed under the said Act
- any other entity entrusted with such function by the Central or State Government

Food for thought

Whether the 'generation' of electricity for a consideration is chargeable to service tax?

Electricity is specified "goods" in the First Schedule of Central Excise Tariff Act, 1985. It has been held in the case of CMS(I) Operations & Maintenance Co. P. Ltd. v. CCE, Pondicherry - 2007 (7) S.T.R. 369 (Tri.-Chennai) that generation of electricity amounts to process of manufacture. Therefore, would not be liable to service tax.

Field Code Changed

Whether the charges collected by a developer for distribution of electricity within a residential complex are covered in this entry?

Charges collected by a developer of a housing society for distribution of electricity within a residential complex are not covered in the Negative List. They would be liable to service tax

12. Specified services relating to Education

The following services relating to education are specified in the negative list –

- pre-school education and education up to higher secondary school or equivalent
- education as a part of a prescribed curriculum for obtaining a qualification recognized by any law for the time being in force;
- education as a part of an approved vocational education course

What are the courses which would qualify as an approved vocational education courses?

Approved vocational education courses have been specified in section 65B of the Act. These are –

- 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 [inserted by Finance Act 2013], offering courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961)
- a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India;
- [a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India]. [This is omitted by Finance Act 2013]

Food for thought

Whether services provided by international schools are also covered?

Yes. Services provided by international schools are not liable as they are equivalent to the 12th standard.

Are services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognized by a foreign law covered in the negative list entry?

No. To be covered in the negative list, a course should be recognized by an Indian law.

Whether services provided by Boarding schools are covered in this entry?

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability would be determined in terms of the principles laid down in section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore, the bundle of services would be treated as consisting entirely of education service. But the other dominant service of providing residential dwelling is also covered in a separate entry of the negative list. Therefore, entire bundle is a negative list service.

Are private tuitions covered in the entry relating to education?

There is an ambiguity as the tuition covers parts of the curriculum and is an education. However Education guide issued by CBEC in this regard provides that private tutors can avail the benefit of threshold exemption. Thus, this could lead to disputes.

If a course in a college leads to dual qualification only one of which is recognized by law would the service provided by the college by way of such education be covered in this entry?
Provision of dual qualifications is in the nature two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately. If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a service which is not bundled in the ordinary course of business contained in section 66F of the Act, it is liable to be treated as a course which attracts the highest liability of service tax.

Are services of conducting admission tests for colleges exempt?
Yes, in case the educational institutions are providing qualification recognized by law for the time being in force.

Whether providing vocational training in the field of biotechnology through computer is covered under this entry?
The entry provides exemption for an approved vocational training . The approved vocational education course is defined. If the service is covered under the approved list the same would not be taxable, otherwise it is subjected to service tax.

Whether the value pertaining to building fee, capitation fee and others collected at the time of admission into the institution is covered under this entry?
No, the services provided by an educational institution in relation to admission are exempt where the educational services provided by the institution are also exempt. Therefore, all the fees mentioned above would be excluded only if the educational services provided by the institution are also in the negative list.

13. Services by way of Renting of residential dwelling for use as residence
'Renting' has been defined in section 65B as ''allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or

without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property'.

Snap shot on taxability/ non-taxability of Renting Transactions:

If	Then
A residential house taken on rent is used only or predominantly for commercial or non-residential use.	The renting transaction is not covered in this negative list entry.
A house is given on rent and the same is used as a hotel or a lodge	The renting transaction is not covered in this negative list entry because the person taking it on rent is using it for a commercial purpose.
Rooms in a hotel or a lodge are let out whether or not for temporary stay	The renting transaction is not covered in this negative list entry because a hotel or a lodge is not a residential dwelling.
Government department allots houses to its employees and charges a license fee	Such service would be covered in the negative list entry relating to services provided by Government and hence non- taxable.
Furnished flats given on rent for temporary stay	These are in the nature of lodges or guest houses and hence not treatable as a residential dwelling

Food for thought

Would renting of a residential dwelling partly used as a residence and partly for non residential purpose like an office be covered under this entry?

Renting of a residential dwelling which is for use partly as a residence and partly for non residential purpose like an Office would be a case of bundled services. Taxability of such bundled services has to be determined in terms of the principles laid down in section 66F of the Act. The taxability would be based on the predominant service.

14. Financial Sector

The services of loans, advances or deposits are in the list in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration. Some examples:

- Fixed deposits or saving deposits or any other such deposits in a bank for which return is received by way of interest.

- Providing a loan or over draft facility for a credit limit facility in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

The Invoice discounting is covered only to the extent consideration it is represented by way of discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration. Services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange to general public are not covered in Negative List.

15. Service relating to Transportation of Passengers

The following services relating to transportation of passengers**,** with or without accompanied belongings, have been specified in the negative list. Services by:

- a stage carriage;
- railways in a class other than (i) first class; or (ii) an AC coach;
- metro, monorail or tramway;
- inland waterways;
- public transport, other than predominantly for tourism purpose, in a vessel between places located in India ; and
- metered cabs, radio taxis or auto rickshaws.

The various other equivalent modes of transport not specified herein could be cause of dispute as the above list is not complete within each segment.

Food for thought

Are services by way of giving on hire of motor vehicles to state transport undertakings covered in this negative list entry?

Services by way of giving on hire of motor vehicles to state transport undertakings are not covered in the negative list. However such services provided by way of hire of motor vehicle meant to carry more than 12 passengers to a State transport undertaking is exempt.

Would services by contract carriages which get permission or temporary permits to ply as stage carriages be taxable?

Specific exemption is available to services of transport passengers by a contract carriage for transportation of passengers, excluding tourism, conducted tours, charter or hire.

16. Service relating to Transportation of Goods

The following services provided in relation to transportation of goods are specified in the negative list:-

- by road except the services of (i) a goods transportation agency; or (ii) a courier agency
- by aircraft or vessel from a place outside India upto the customs station of clearance in India; or
- By inland waterways. (. Services provided as agents for inland waterways are not covered in the negative list.)

Food for thought

Are GTA services excluded?

All services provided by goods transport agency are excluded from the negative list. However, there are separate exemptions available to the services provided by the goods transport agency. These are services by way of transportation of –

(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;"; .

The provisions relating to reverse charge, i.e. service tax is liable to be paid by the consigner or consignee in specified cases, are applicable even after the introduction of negative list.

Whether all kinds of transportation of goods are covered in negative list?

Nature of service relating to transportation of goods	**Covered in the negative list?**

By railways	No
By air within the country or abroad	No
By a vessel in the coastal waters	No
By a vessel on a national waterway	Yes
Services provided by a GTA	No

Whether transportation service provided by the truck owner and truck operator to end user directly is liable to service tax?

Service provided by truck owner directly to end user is covered by the negative list entry and is not liable to service tax.

17. Funeral, Burial, Crematorium or Mortuary services including transportation of the deceased

This entry exempts services in relation to cremation etc. of dead.

Break of Cenvat Chain

It is important to note that there is no corresponding exclusion from service tax levy to the auxiliary services or to the service providers who are rendering services to such service providers who are rendering services covered in negative list. This leads to a break in tax chain. It adds to cascading effect, which was the very thing that was sought to be avoided.

An option could be given to such input service providers who are rendering services to negative list service providers to go for a cenvat credits refund w.r.t. the services provided by them to recipients whose services are covered in negative list.

CLASSIFICATION OF SERVICE

Introduction

This chapter gives the mechanism, manner and approach for classification of services. Generally under any tax laws, classification merits importance for the purpose of identifying the rate of duty/tax. Under the service tax provisions, the classification is essential to identify the taxability itself. Classification of service under service tax essentially would determine the taxability and specific exemptions/abatements available if any. It would also determine the effective date of service.

Classification of the service involved under service tax is perhaps the single most important step in ensuring legal compliance. Classification of services poses certain challenges unlike classification of goods as services are intangible. Professionals handling service tax matters often face problems here as the service sector involves specialists who specialize in certain select fields (technocrats, scientists, engineers) and who are not attuned to the requirements under service tax and the possible ramifications of non-compliance. Sometimes, the service provider may even be uneducated (for instance if he is a goods transport agency, sub contractors in the construction industry, pandal or shamiana contractor). Very often when it comes to classifying a service, difficulties are faced in understanding the exact nature of services being provided by the service providers as the explanations given can only be understood by another technically qualified individual rather than a professional who is well versed only in matters pertaining to taxation. The understanding of the trade is critical in this regard.

Relevance of the concept of classification

An assessee under Central Excise would know the importance of classification and the influence it would have on his liability. Similarly the importance of classification under service tax is not to be underestimated as it is important to determine the specific exemptions/abatements available if any. It would also determine the effective date of service.

There have been numerous instances where assessees differ with the departmental authorities on the issue of classification of services they provide.

The legal maxim which states – *"Nothing is to be read into a definition and nothing should be omitted to be read."* has to be kept in mind while determining the classification of services. For the purpose of classification, one would have to follow the provisions as laid down in Section 66F. The same has been discussed below:-

Scope of Sub Section (1) to Section 66F:

The sub section (1) of section 66F provides that any input service required to provide main service will not be covered in main service. This means input service will be considered as a separate service. This position was also prevalent prior to 1st July, 2012. The sub section reads as follows:

> ***"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."***

The sub section (1) of the section 66F deals with interpretation of specified description of services. This is emphasizing that the classification of the main contract cannot be used for the sub-contract or any other service provided for rendering the main service. This means, if a service (main service) is specifically excluded or exempted by way of Negative List or Exemption notification then any service used for providing the main service is precluded from the same benefit.

For example, 'provision of access to any road or bridge on payment of toll' is in Negative List. However, service provided for collection of toll or security of cash would not fall under negative list – Paras 4.8.2 and 9.1.1 of CBEC's Taxation of Services: An Education Guide' published on 20.06.2012.

If construction of a Government building is exempt (main service), architect or labour supplier providing service to builder/ contractor for such contract will not be able to avail that exemption, even if used to provide 'main service'.

However, if a contractor outsources the work of construction to a sub-contractor, the service provided by the sub-contractor is exempt. This is because of a specific exemption given under Notification No. 25/2012-ST dated 20.06.2012 effective from 01.07.2012 which provides that if the main Works contract is exempt, sub-contractor providing works contract service to main contractor will be exempt from service tax. This exemption is only when the sub-contractor provides works contract service and not in other cases.

Scope of Sub Section (2) To Section 66F:

Section 66F(2) reads as follows-

"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"

This sub section implies that if a particular service is classifiable under more than one category then the category of service which specifically covers such service will be preferred than the general service. The same can be understood with the examples. For example, a hotel rents out a conference room for an official conference where lunch is also served. It can be classified as 'mandap keeper' or 'convention service'. Between these two entries, 'convention service' is more specific as it covers only conventions which are like official function. 'Mandap keeper' is general description as it includes official, social as well as business functions. Hence, such service will be a 'convention service'. – CBEC circular No. 51/13/2002-ST dated 07.01.2003.

The same principle was applied in Coal Handlers P Ltd. v. CCE (2007) 6 STT 513 (CESTAT), where it was held that C&F Agent is specific description compared to 'business auxiliary services'.

It is also otherwise a general rule of interpretation that a specific heading should be preferred over general heading. There are many Supreme Court cases supporting the same, like CCE v. Frito Lay India (2009) 242 ELT 3 (SC), and Hindustan Poles Corporation v. CCE (2006) 196 ELT 400 (SC), etc.

Scope of Sub Section (3) To Section 66F:

It is pertinent to understand what Bundled Services is before proceeding to sub section (3) of section 66F. The meaning of **'Bundled Services'** has been given in Explanation to section 66F(3) of the Finance Act, 1994. It means a bundle of provision of various services wherein an element of provision one service is combined with an element or elements of provision of any other service or services. Basically it is a composite service consisting of two or more services. For example, an airline provides movie or catering on board. Each service involves differential treatment as the manner of determination of value of two services for the purpose of charging service tax is different.

However, if the service provider clubs two or more services to provide a single service to a service recipient and such single service is already present in the statute as a separate

entry in Negative List, or exemptions or Declared services, then the same will be accordingly classified instead of following the principle of Bundled services. Two rules have been prescribed for determining the taxability of such bundled services in sub-section (3) of section 66F of the Act. These rules, which are explained below, are subject to the provisions of the rule contained in sub section (2) of section 66F, viz a specific description will be preferred over a general description as explained above. The sub-section (3) of section 66F reads as follows:

> ***"Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely:— (a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character; (b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax."***

Section 66F(3)(a) explains that if services are naturally bundled in the ordinary course of business then it should be classified as per the category of service which gives it the essential character. For example, a hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

It is provided in section 66F(3)(b) of the Act that when various services are not naturally bundled in the ordinary course of business, then the service shall be the one attracting highest service tax liability. The following has been given in the Education Guide issued by CBEC on 20th June, 2012.

For example, premises are rented which are partly for residential purposes and partly for manufacturing activity. Thus, it is not service bundled in ordinary course of business. In such case, though residential use is not taxable, commercial use is taxable. Hence, the entire bundle will be treated as renting of commercial property.

-

Possible ramifications where the assessee gets the classification wrong

Where the assessee gets the classification of service wrong, the result could be as follows –

- Losing out on the exemptions which could have been claimed if the classification had been done correctly, as a result of which the assessee pays more than what is required to be paid
- Loss of business due to rivals/competitors being cost-effective
- Wrongly claiming exemption that he was not entitled to in the normal course as a result of which he is saddled with additional liability along with interest and penalties which cannot be collected from clients/customers thereby affecting his cash flows
- Paying service tax when he was not required to pay as a result of wrongly classifying his service under a category which was not appropriate leading to huge debts. He could lose where the refund period of 1 year would also be over.
- Not paying service tax when he was actually liable to pay the same as a result of classifying his service under a category which was not being taxed earlier but is taxed from a later date.
- Getting the liability on Import of Services all wrong or not claiming the benefit of export on service exports due to improper classification could also happen. This could happen when the alternative headings available have different import/export criterion being applicable to them.
- To avail for any beneficial clarification given by circulars and
- To take advantage of any notifications issued retrospectively for particular service.

Classification of services under negative list based taxation

- There is no concept of taxable services category under negative list based taxation. If the classification is incorrect, it may not be treated as a violation as it is not specifically prescribed for taxability under specified taxable services category under negative list based taxation.
- However circular no. 165/16/2012 -ST dated 20.11. 2012 and notification no.48/2012-ST was issued giving a list of 120 descriptions of services for the purpose of registration and accounting codes corresponding to each description of service for payment of tax. Descriptions of taxable services given in the annexure to such a circular are solely for the purpose of statistical analysis. As per said notification the registrant has to make a choice of taxable services. These entries are based on earlier taxable services clauses. In addition, there is a residuary entry 120 covering other than the 119 mentioned earlier.

Pointers for practice

- The professional handling service tax matters would be required to go through the various records maintained by the assessee before arriving at a final decision regarding classification and exemption. This would ensure that the exemption or exclusion claimed is done on the basis of documentary evidence rather than only on the basis of interviews. However in the absence of documents the same maybe made clear in the opinion.
- The professional would have to be careful in case of bundled service. Here, the trade practice, agreement available or the method of invoicing or charging need not in itself determine whether the service is a single service or multiple services. Here, the real nature and the substance of the transaction should be the guiding factor rather than form of the transaction. He/she should therefore try to find out the category of service which gives the essential character and then adopt that category for classification
- Periodical review of the exemptions may also be undertaken by the professional to ascertain whether the concerned services can be classified under other headings which would disentitile the exemption.
- The shelf life of the opinion is to made clear to the client.
- In case of any doubt in the exemption, the same is preferable to be intimated to the department and their confirmation sought. In case the same can be collected from the customer then maybe paid under protest.

EXEMPTIONS INCLUDING MEGA EXEMPTION

Under the previous service tax law (i.e., law prevailing upto 30th of June, 2012) there were totally around 88 exemption notifications. Though this new system of tax has come into effect the need for exemptions is not obviated. Some of the existing exemptions have been built into the negative list, while some are continued to be exempted in the current scenario under the new category. For the sake of convenience and simplicity, most of the exemptions now forms a part of one notification which is popularly called as 'Mega Exemption Notification' 25/2012-ST, dated 20th June, 2012.

Mega Exemption Notification

The Exemptions contained in the notification are discussed below in detail:

1. Services provided to the United Nations or a specified international organization

This entry exempts all the services provided to the United Nations or a specified international organisation i.e., service recipient is UN or specified International Organisation. There are no specific conditions that have been given for claiming exemptions. It may be noted that though the law makers have given the exemption for the services provided to a UN or specified international organisation, there is no such exemption given for the services provided by UN or specified international organisation.

Illustrative list of specified international organisations are as follows:

1. International Civil Aviation Organisation
2. World Health Organisation
3. International Labor Organisation
4. Food and Agriculture Organisation of the United Nations
5. UN Educational, Scientific and Cultural Organisation (UNESCO)
6. International Monetary Fund (IMF)
7. International Bank for Reconstruction and Development
8. Universal Postal Union
9. International Telecommunication Union
10. World Meteorological Organisation

11. Permanent Central Opium Board
12. International Hydrographic Bureau
13. Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants
14. Asian African Legal Consultative Committee
15. Commonwealth Asia Pacific Youth Development Centre, Chandigarh
16. Delegation of Commission of European Community
17. Customs Co-operation Council
18. Asia Pacific Telecommunity
19. International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)
20. International Centre for Genetic Engineering and Biotechnology
21. Asian Development Bank
22. South Asian Association for Regional Co-operation
23. International Jute Organisation, Dhaka, Bangladesh

2. Health care services

This entry exempts health care services by a clinical establishment, an authorised medical practitioner or Para-medics.

In order to understand what exactly has been exempted, the following terms has to be understood-

a. The term 'health care services' has been defined in clause 2(t) of this notification to meanany service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

b. Clinical Establishment as per clause 2(j) of the notification means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

c. "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

d. 'Para-medics' have not been defined in notification. However, the meaning of the same has been given by way of clarification in CBEC's Education guide. Paramedics are trained health care professionals, for example nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.

3. Services by a veterinary clinic in relation to health care of animals or birds

The term 'veterinary clinic' has not been defined in the said notification. It has to be understood in common parlance. Thus, generally it means a healthcare facility for care of birds and animals.

4. Charitable Institutions

Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities.

"Charitable activities" means activities relating to -

(i) public health by way of -

(a) care or counselling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(b) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion or spirituality;

(iii) advancement of educational programmes or skill development relating to,-

(a) abandoned, orphaned or homeless children;

(b) physically or mentally abused and traumatized persons;

(c) prisoners; or

(d) persons over the age of 65 years residing in a rural area;

(iv) reservation of environment including watershed, forests and wildlife; or

(v) [advancement of any other object of general public utility up to a value of,-

(a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;

(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year]; This clause is excluded wef 1.4.2013

Analysis of the above-

If a Charitable Institution is rendering any activities falling under (i) to (iv) above, then the same will be exempt from service tax without any limit. However, for the activities as mentioned in (v) above, service tax is exempt upto Rs.25 lakhs in a financial year if the total value of such services had not exceeded Rs.25 lakh during the preceeding financial year. The later (v) exemption would be available only if such activity is meant for general public and general public is defined in the notification as 'body of people at large sufficiently defined by some common quality of public or impersonal nature'. The exemption under this limb is no longer available to charitable trust.

5. Services provided for Religious purpose

This entry exempts the following service provided by any person-

(a) Service by way of renting of precincts of a religious place meant for general public, or

(b) Service by way of conduct of any religious ceremony.

Analysis of the entry

The notification vide clause 2(zb) has defined the term religious place as to a place which is primarily meant for conduct of prayers or worship pertaining to a religion.

In the first limb of this entry, the essential aspects to be considered are:

(a) The place should be religious place,

(b) Religious place should be meant for general public.

This means there should be no restriction or limitation in normal conditions on any person entering or leaving from the place.

The second limb covers the activity of priest, clergy, mullah, etc., providing services of conducting of any religious ceremony. These functions may be for any of the religion. Also in the case of Commissioner of Central Excise, Mangalore v. Krishnapur Mutt 2006 (3) S.T.R. 144 (Tri.-Bang.) it has been held that marriage is also a religious ceremony.

6. Services provided by Advocates

The entry reads as follows:

Services provided by-

(a) an arbitral tribunal to -

i. any person other than a business entity; or

ii. a business entity with a turnover up to rupees ten lakh in the preceding financial year;

(b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-

i. an advocate or partnership firm of advocates providing legal services ;

ii. any person other than a business entity; or

iii. a business entity with a turnover up to rupees ten lakh in the preceding financial year; or

(c) a person represented on an arbitral tribunal to an arbitral tribunal.

Analysis of this entry-

The first part of this entry exempts the services provided by an Arbitral Tribunal to any person, however, in case the recipient is a business entity then the exemption would be available only if such entity is with a turnover up to Rs.10 lakh in the preceeding financial year. 'Turnover' in common parlance means the aggregate of the sale or service provided in a financial year.

As per the second limb, the service provider for claiming this service has to be an individual advocate or could be a partnership firm having only advocates as a partners. Also, not every service that is provided by an Advocate is exempt. The service that is exempted is legal services. The term has not been defined and hence, it is very wide to cover the chamber practice as well as court practice of an advocate.

The last part of this entry exempts the service provided by any person who is representing in an arbitral tribunal to resolve dispute between parties.

The term business entity is defined as follows- As per section 65B(17)- "business entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;

7. Technical testing or analysis of newly developed drugs, including vaccines and herbal remedies on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller of India.

The said notification exempts the services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies on human participants by a clinical research organisation approved to conduct clinical trials by Drug Controller General of India.

The term "technical testing or analysis" is not defined in the notification. Although the definition of the technical testing or analysis is given under section 65(106) of the Finance Act(which is now redundant), it is not relevant for the interpretation of the present notification. However, an inference can be made to the same to understand what the statute intends to mean by technical testing or analysis.

8. Training or coaching in recreational activities

This notification exempts services by way of training or coaching in recreational activities relating to arts, culture or sports. Recreational activities are often done for enjoyment, amusement, or pleasure and are considered to be 'fun'. This notification has intended to exempt not all recreational courses but has restricted the exemption to art, culture and sports only. However, it may be noted that where the activities of art, culture or sports are otherwise than for recreational purposes then they would not be covered under the said exemption notification.

Food for thought:

A cricket academy renders professional cricket training classes. Will it be exempt from service tax under said notification?

No, as the cricket academy renders cricket training on a professional basis and not merely for enjoyment, amusement or pleasure, it would not be covered by said exemption notification. It is noteworthy that earlier the field of sports was specifically excluded from the definition of commercial training or coaching centre.

9. Educational Services

This entry exempts services provided to [or by] an educational institution in respect of education exempted from service tax, by way of,-[the words ' or by' is omitted by Finance Act 2013]. This exemption now restricted to specified services provided by educational institution is no longer covered in the exemption.

(a) auxiliary educational services; or

(b) renting of immovable property

Certain services provided by way of education facilities have been included under negative list of services under section 66D of the Act. Further this notification has been issued to exempt other services related to educational institutions which are not included in the negative list. The purpose of these exemptions is to ensure that the education sector is not burdened with unnecessary tax. For the purpose of claiming exemption under this notification, it is necessary that the educational services by institution receiving the services should be covered by the negative list.

Food for thought

A school providing preschool education arranges for a picnic for which bus is hired. Whether hiring charges paid to bus owner and recovered from staff and students is liable to service tax?

Exemption is applicable only when the transportation service is provided to an institution in relation to educational services. In the instant case the bus is hired for the purpose of picnic. Hence, hiring charges paid to bus owner and recovered from staff and student is liable to service tax. However, if one was to look at it with a holistic approach, it can be said that the trip is organised as a part of the curriculum of the institute, exemption would be available to charges paid to bus owner.

10. Services received by a recognised sports body

The said notification exempts services provided by the following persons to a recognised sports body from service tax:

(a) An individual as a player, referee, umpire, coach or a manager for participation in a sporting event organised by a recognised sports body;

(b) One recognised sports body providing service to another sport body.

The essential condition for claiming exemption under this entry is that the service to be provided should be only for participation in a tournament or championship organised by a recognised sports body.

Food for thought-

Whether services provided by doctor/ physicianto the recognized sports body for a tournament or championships are covered under this exemption?

No. Since the exemption is only for specific persons like player, umpire, referee, coach or a manager, doctor/physician is not covered here.

When services provided by a coach are on a monthly basis or a retainer ship basis, is it exempt under this section?

No. The services shall be provided specifically for a tournament or a championship organized by the recognized sports body.

11. Sponsorship services to certain sports events

Sl. No. 11 of the said notification exempts the following services by way of sponsorship of tournaments or championships when organized:-

(a) By a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone

The condition for claiming this exemption is that, the participating teams or individuals of such tournaments or championship shall represent their district, state or zone.

(b) By Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympics Committee of India, Special Olympics Bharat

Any amount sponsored to the below mentioned organizations for the purposes of conducting tournaments or championships are exempt from service tax:

- Association of Indian Universities
- Inter-University Sports Board
- School Games Federation of India
- All India Sports Council for the Deaf
- Paralympics Committee of India
- Special Olympics Bharat

(c) By Central Civil Services Cultural and Sports Board

(d) As part of national games, by Indian Olympic Association

(e) Under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.

12. Services to Government / Governmental Authority / Local Authority

This entry reads as Services provided to the Government, a local authority or a governmental authority by way of *construction**,** erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -*

a. a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
b. a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
c. a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
d. canal, dam or other irrigation works;
e. pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
f. a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to clause 44 of section 65 B of the said Act;

This exemption notification intends to cover only services provided to specified service recipient viz., Government, Local authority and Governmental authority.

Governmental Authority is defined as follows in said notification-(s) means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;

The functions entrusted to municipality as per article 243W are as follows-

Article 243W of the Constitution is as under:
'Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

i) the preparation of plans for economic development and social justice;
ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.'
Matters listed in twelfth schedule are:
1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.

5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

Food for thought-

What will be the service tax implication in the following case:

Construction service is provided by the contractor to the government (the building after construction was supposed to be utilized for non commercial purpose). However, after completion of majority of construction work, say 90% of the said building, the Govt. notified it to use for commercial purpose.

Comments- Since the exemption is only when the nature of usage of building is for non-commercial or non-industrial purposes and in the instant case the building is put to use for commercial exploitation, service tax would be applicable and the service provider would pay service tax accordingly. However, if the building is decided to be used for commercial purpose after completion of construction, the exemption could be claimed.

A Ltd has entered a contract with Government for construction of building which is for non-commercial purposes. Subsequently, A Ltd has sub-contracted part of the construction activity to B Ltd. Whether the works executed by B Ltd are also covered by the exemption?

No, under this notification the services provided by B ltd. are not exempt since the services are not provided to the Govt., but provided to A Ltd. However, exemption can be claimed vide Sl.no. 29(h) of this notification if sub-contracted works is of nature of material plus labour work of nature of works contract which is sub-contracted by main contractor who is also executing a works contract.

Whether the educational institutions which are government aided are also covered under this exemption?

No, the educational institutions which are administered and run by government or local authority are only covered under this exemption. If a private college which is partly funded by government constructs a building it would not be covered under this category.

13. Services to specified categories

The said notification exempts services provided by way of construction**,** erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961)and meant predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

This exemption intends to cover the services provided by any person to any person. Unlike the previous entry of exemption which restricted exemption to specified services to Government, Local authority or Governmental authority under Sl.no.12 the service recipient can be any person. Therefore, the services provided by way of sub-contractor to the main contractor is also covered subject that the service is of the nature described in this entry.

Food for thought-

The contract of construction of road is given to A Ltd. A Ltd sub-contracts the same to B Ltd. Shall the sub-contractor is also eligible for the exemption?

Yes, the sub-contractor is exempted because the exemption is relating to the service provided irrespective of the service provider/ receiver.

Whether the contract for laying road in the factory which is used from one department to another department or one unit to another unit is out of service tax?

No, since the road is not used by general public, the same is liable for service tax.

14. Construction of specified original works:

This category covers services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) an airport, port or railways, including monorail or metro;

(b) a single residential unit otherwise than as a part of a residential complex;

(c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

Original work would mean –

- All new constructions;
- All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

Food for thought:

I am setting up a wheat flour mill. The supplier of machines is demanding service tax on erection and installation of machineries and equipments in the flour mill. Is the supplier is right in demanding the service tax?

There is no service tax liability on erection or installation of machineries or equipments for units processing wheat. You are processing wheat which is made from processing an agricultural produce. Similarly erection or installation of machineries or equipments for dal mills, rice mills, milk dairies or cotton ginning mills would be exempt.

Whether construction of villas exempted from service tax?

The exemption at sl no.14(b) is available where plan approval is given for construction of a single residential unit which is meant for use of a family, then it is covered in this exemption. In which case not liable to service tax. This would also be as per decision in Macro Marvel Projects Ltd. v. Commissioner — 2008 (12) S.T.R. 603 (Tribunal) where held that construction of individual residential units not subject to levy of Service tax. Maintained in 2012 (25) STR J154 (Supreme Court).

Field Code Changed

Field Code Changed

15. Temporary transfer or permitting the use or enjoyment of a copyright:

This notification provides exemption in relation to 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 cinematograph films;

In this case it should be noted that two conditions are mentioned here i.e.-

There should be a specified copyright- this exemption is applicable only if the owner transfers temporarily the rights relating to original literary, dramatic, musical, artistic works or cinematograph films;

There must be a temporary transfer- In case it is permanent transfer it amounts to sale of good and not a service.

The Finance Act 2013, has restricted exemption to temporary transfer or permitting the use or enjoyment of a copyright of cinematograph films for exhibition in a cinema hall or cinema theatre;

Food for thought:

Will a music company having the copyright for any sound recording be taxable for his activity of distributing music?

Temporary transfer of a copyright relating to original literary, dramatic, musical, artistic work or cinematographic film for exhibition in a cinema hall or cinema theatre falling under clause (a) and (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 is exempt. A music company would be required to pay service tax as the copyright relating to sound recording falls under clause (c) of sub-section (1) of section 13 of the Indian Copyright Act, 1957.

16. Exemptions to certain Artists:

The said Notification exempts services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;

To avail this exemption, the essential conditions are:

1. The performance would be folk or classical -- the word folk would mean something that is originated from beliefs and customs of ordinary people, the word classical means a traditional and long established form or style.

2. The performance would be in relation to music, dance or theatre.
3. The performance would not be provided as a brand ambassador- In general parlance, brand ambassador means a person, who is known for his skills and talents, when agrees to represent a brand in a direct way.

Food for thought:

When an artist performing a dance or music which is Folk of a different country, whether services provided by him/her are exempt under this entry?

Yes, it would be exempt under the said entry as it has not been specified as to it has to Indian Folk/music/theatre.

17. News agency service:

This Notification exempts services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

Independent Journalist: An Independent journalist has not been defined. However, in common parlance the term would be all journalists who provide service as a freelance. Provision of services in form of collation or provision of news by independent journalist would be exempt from service tax. A corporate owned news gathering organization would not be equated to independent Journalist.

Press Trust of India (PTI) and United News of India are two primary Indian News agencies. Thus services provided by them are exempt.

18. Services of renting hotel/inn/guesthouse etc. having declared tariff of less than Rs. 1000

This entry covers services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

Food for thought:

Whether accommodation facility provided in a hotel/ hostel is covered by the exemption notification?

Hotels can be covered under 'any other commercial places meant for residential or lodging proposes'. However, in case of hostels, there is no declared tariff and rate is generally quoted on per month basis. Notification permits exemption where declared tariff is less than Rs. 1000 per day or equivalent. Rates charged hotels, if converted per day basis, is less than Rs. 1000, exemption will be available.

Is the luxury tax imposed by states required to be included for the purpose of determining either the declared tariff or the actual room rent?

Comments: For the purpose of service tax luxury tax has to be excluded from the taxable value.

Whether hospitals providing the accommodation to patients would be covered under this exemption?

The service providers as defined in the definition are hotels, inn, guest house, club or campsite or other commercial places meant for residential or lodging purposes. Hospitals are not meant for residential or lodging purpose. Hence exemption is not available under this notification. However, exemption may be examined under health care facilities.

19. Services of specified restaurants:

This Notification exempts services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, **and** (ii) a license to serve alcoholic beverages; After 1.4.2013, exemption is available only if there is no AC in any part of establishment in any part of year.

To avail this exemption it is important to satisfy both the conditions i.e. (i) and (ii) above.

20. Transportation of specified items by Rail or vessel:

This entry exempts services by way of transportation by rail or a vessel from one place in India to another of the following goods -

(a)

(b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(c) defence or military equipments;

(d)

(e)

(f) newspaper or magazines registered with the Registrar of Newspapers;

(g) railway equipments or materials;

(h) agricultural produce;

(i) food stuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or

(j) chemical fertilizer and oil cakes;

This Notification has not clearly spelt whether services provided by private rail are also covered or not. Therefore exemption can be claimed in the absence of any restriction on the same.

Apart from rail, if transportation is done through vessel from one port to another, it is also covered by the exemption notification.

21. Service of certain goods by GTA:

This entry exempts services provided by a goods transport agency by way of transportation of -

(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;

(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or

(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

The above entry is substituted by following wef 1.4.2013

21. Services provided by a goods transport agency, by way of transport in a goods carriage of,-

(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;";

Food for thought:

A goods carriage carrying 5 consignments (all for different consignee) at the Rate of Rs. 200 per consignee.

The same is exempt under this exemption since the gross amount charged is less than Rs. 1500.

A goods carriage carrying 5 consignments, (all for different consignee) at the Rate of Rs. 1000 per consignment.

The same is taxable since the gross amount charged is more than Rs. 1500.

Goods where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty.

22. Hiring of Motor Vehicle and means of transportation:

This entry exempts services by way of giving on hire -

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(b) to a goods transport agency, a means of transportation of goods;

Hiring means transferring temporary use of a thing/article/goods for a certain period. It should be distinguished with transfer of right to use goods which is liable to VAT. Motor vehicle should be for transportation of more than 12 passengers. Here there is no mention about driver and the conductor, they should not be included in the calculation in specified number of passengers. Exemption is available only for giving motor vehicle on hire, not for any other services.

Food for thought:

Forklift is supplied on hire to a GTA for loading and unloading of goods in a truck. Whether exemption is available?

Exemption is available when "a means of transportation of goods" is supplied. It means a vehicle usable in actual transportation of goods. Forklift cannot be used in actual transportation of goods. Accordingly, exemption benefit is not available.

23. Transport of passengers to/from specified areas, and others:

This entry covers transport of passengers, with or without accompanied belongings, by -

(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;

(b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c) ropeway, cable car or aerial tramway;

The transportation should be through air. It may include airlines, helicopter, and charter flight of any other kind or similar means of transportation.

A contract carriage is generally carriage of passengers for hire, which is engaged under a contract, which may be express or implied. The contract may be for use of the vehicle as a whole

for such carriage and is entered into by a person with the holder of the permit for such vehicle. The consideration may be fixed on time basis of the points involved.

Transportation of passengers through contract carriage is exempted. However, if the vehicle is used for tourism, conducted tour, charter or hire, it would not be covered by the exemption notification.

24. Motor vehicle parking

This entry covers services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

Food for thought:

This exemption is not available wef 1.4.2013.

25. Specified services provided to government or local authority or government authority:

This entry covers services provided to Government, a local authority or a governmental authority by way of -

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

(b) repair or maintenance of a vessel [or an aircraft]; The repairs or maintenance of aircraft omitted wef 1.4.2013.

Any activity undertaken by any other person for a consideration to the government in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation is exempted.

Any service of repair or maintenance of a vessel is covered under this exemption notification; however the same service provided to rail is not covered under this entry of exemption.

26. Specified General Insurance schemes:

This entry exempts services of general insurance business provided under following schemes -

(a) Hut Insurance Scheme;

(b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);

(c) Scheme for Insurance of Tribals;

(d) Janata Personal Accident Policy and Gramin Accident Policy;

(e) Group Personal Accident Policy for Self-Employed Women;

(f) Agricultural Pumpset and Failed Well Insurance;

(g) premia collected on export credit insurance;

(h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the sMinistry of Agriculture;

(i) Jan Arogya Bima Policy;

(j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);

(k) Pilot Scheme on Seed Crop Insurance;

(l) Central Sector Scheme on Cattle Insurance;

(m) Universal Health Insurance Scheme;

(n) Rashtriya Swasthya Bima Yojana; or

(o) Coconut Palm Insurance Scheme;

27. Exemptions to Incubatee:

Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

(a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and

(b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;

The term 'Incubatee" has been defined to mean an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and Innovative products.

28. Exemptions to trade unions/societies:

This entry covers service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

(a) as a trade union;

(b) for the provision of carrying out any activity which is exempt from the levy of service tax; or

(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

The essential feature of the present exemption is as follows:

- service should be provided or to be provided by specified unincorporated body or an specified entities registered as a society
- such services should be to its own members
- such services should be by way of reimbursement of charges or shares of contribution

Food for thought:

A society provides pre-school education services. The society, to provide services takes contribution from its members. Whether the services provided by the members are taxable?

Comments: No, this is not taxable under this entry since the contribution received by the members is providing certain services which are exempt and the services are provided to third parties.

29. Services exempt by certain persons:

This entry covers services provided by the following persons in respective capacities --

(a) sub-broker or an authorised person to a stock broker;
(b) authorised person to a member of a commodity exchange;
(c) mutual fund agent to a mutual fund or asset management company;
(d) distributor to a mutual fund or asset management company;
(e) selling or marketing agent of lottery tickets to a distributer or a selling agent;
(f) selling agent or a distributer of SIM cards or recharge coupon vouchers;
(g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30. Services of job work as Intermediate production:

This entry covers the services of Carrying out an intermediate production process as job work in relation to -

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985 (5 of 1986);

(c) any goods on which appropriate duty is payable by the principal manufacturer; or

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

This limit of Rs 150 Lacs is applicable only to the last limb of the entry (d), and not to the first three. All the above exemptions existed in the positive based taxation and even continues to be exempted in the negative regime.

31. Services for a business exhibition held outside India:

This entry covers services by an organizer to any person in respect of a business exhibition held outside India;

Service of a business exhibition held outside India shall fall outside the ambit of Finance Act, 1994.

However services of commission agent and event managers would not be tested by this category and their liability would be determined as would be specific to their effects.

32. Exemption in the telephone sector:

Services by way of making telephone calls from -

- departmentally run public telephone;
- guaranteed public telephone operating only for local calls; or
- free telephone at airport and hospital where no bills are being issued;

33. Services by way of slaughtering of animals;

As per the latest amendments, the exemption is for services by way of slaughtering of animals. Earlier only Bovine animals were covered by this notification. It is to be noted that the new exemption has not specified as to the requirement of mechanized slaughter houses which was a criteria in the positive list based taxation. .

34. Services imported exempted in certain cases:

Services when imported by certain specified entities are exempt from service tax. The entities covered by this notification are :

a. Government, local authority, a governmental authority or an individual in relation to any purpose other that commerce, industry or any other business or profession
b. An entity registered under section 12AA of the Income Tax Act,1961 for the purpose of providing charitable activities;
c. A person located in non taxable territory.

The last limb of the above clause means the service provided from outside taxable territory to a person outside taxable territory. This activity would anyways not taxable based on the place of provisions of service, Rules, 2012. The need for inserting this clause is unknown.

35. Services of Public Libraries:

The services provided by a public library by way of lending of books, publications or any other knowledge enhancing content or material shall not be subject to service tax. Most of the libraries do not charge any consideration for lending books. However, one time membership fees are charged. This one time membership would also be covered under this exemption.

36. Services by Employees State Insurance Corporation to persons governed under the ESI Act, 1948

Services provided by the ESI to persons governed by the ESI Act are exempt from service tax.

37. Transfer of a going concern as a whole

When a going concern in full or an independent part of the concern is transferred as such, such transaction is exempted from service tax. This concept of transfer is termed as “Slump sale” in Income Tax.

38. Services by way of public conveniences

Amounts collected towards providing services for public conveniences like public toilets, washrooms etc are exempt from service tax.

39. Specified services provided by a governmental authority

Certain specified services which are entrusted to a municipality, but which are provided by a governmental authority are exempt from service tax. The specified services are those which are mentioned under Article 243W of the Constitution of India. The list of services was set out earlier in context of exemption in sl no.12 :

Small Service Provider Exemption

Service tax provides for an exemption to small service providers who provide taxable services of a value not exceeding the specified limit. The specified limit is now Rs. 10 lakhs. In other words where the value of taxable services provided do not exceed Rs. 10 lakhs in the previous financial year, the concerned service provider would not be required to pay service tax upto receipts of Rs. 10 lakhs in the current financial year. The exemption is through notification 33/2012ST as amended from time to time. The service provider should however satisfy certain conditions in order to avail the benefit of this exemption. The conditions to be noted here are as follows –

- Taxable services provided by a person under a brand name or a trade name (whether registered or not) of another person would **NOT** be eligible for this exemption
- A receiver of services who is liable to pay service tax on the services he has received by virtue of section 68(2) cannot avail the benefit of this exemption with regard to such payments. More commonly this is relevant for recepient of GTA Services or in case of import of services where no exemption is entitled.
- Once an option is exercised in regard to this exemption during a financial year, it cannot be changed in the same financial year. [This however does not mean that the claiming of the exemption makes it compulosory to claim for the whole year. In between even without reaching Rs.10 lakhs the option to pay can be made.]
- No cenvat credit can be availed on inputs or input services used in providing such output service for which exemption is being claimed.
- Cenvat credit cannot be availed on capital goods received in the premises of provider of such service during the exemption period.
- The service provider shall pay an amount equivalent to the cenvat credit taken by him in respect of inputs lying in stock or in process on the date of availment of exemption. After paying such an amount, if there is any balance of cenvat credit remaining unutilized, such balance would lapse.
- The exemption shall apply in respect of the aggregate value of all taxable services provided by the service provider (even if from more than one premises) and not individually.

- Exempted services shall be outside the purview of the exemption of this notification. In other words, the value for ascertaining the limit of Rs. 10 Lakhs would be that of taxable services alone on which service tax is payable.
- The aggregate value of such services provided in the preceding financial year should not exceed the aforesaid exemption limit.

Is there any exemption from service tax where the service provider transfers property in goods during the course of provision of services?

The service provider who transfers property in goods during the course of providing taxable service would be entitled to avail the benefit of notification 12/2003 ST dated 20.06.03 as amended from time to time. This notification provides a deduction for the value of materials and goods sold by the service provider to the recipient of service, from the gross amount charged for the service, provided there is supporting documentation for the same, evidencing use of material in course of providing service. The service provider in effect is required to pay service tax on the balance amount constituting labour charges alone. However, where the service provider avails the benefit of this notification, he cannot avail cenvat credit of the excise duty paid on goods and materials so sold but can avail credit of service tax paid on input services. Even excise duties paid on capital goods can be availed as credits. One big advantage of this notification is that the same is not restricted to any one single category of service. Thus where the service provider knows the amounts being charged for labour and the amounts towards sale of goods or materials, this notification can be followed.

This exemption is not available wef 1.7.2012. Therefore post negative list, when there are elements of both goods and service in provision of service, the taxability would be determined based on essential nature test.

Abatements

Dictionary meaning of abatement is "Reduction, Decrease or discount." In reference to service tax, this term is used for amount liable to be reduced from value of taxable service as per finance act and rules therein. In other words, abatement also is an partial exemption. In this context the Government has provided certain abatements for certain classes of services. These are provided vide Notification 26/2012-ST dated 20.06.2012.

The abatements are:

Sl No.	Description of Service	Taxable portion	Conditions
1	Services in relation to financial leasing including hire purchase	10	Nil.
2	Transport of goods by rail	30	Nil.
3	Transport of passengers, with or without accompanied belongings by rail	30	Nil.
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	70	(i) CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
5	Transport of passengers by air, with or without accompanied belongings	40	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for	60	Same as above.

Sl No.	Description of Service	Taxable portion	Conditions
	residential or lodging purposes.		
7	Services of goods transport agency in relation to transportation of goods.	25	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
8	Services provided in relation to chit	70	Same as above.
9	Renting of any motor vehicle designed to carry passengers	40	Same as above.
10	Transport of goods in a vessel	50	Same as above.
11	Services by a tour operator in relation to,- (i) a package tour	25	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.
	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	10	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.
	(iii) any services other than	40	(i) CENVAT credit on inputs, capital goods

Sl No.	Description of Service	Taxable portion	Conditions
	specified at (i) and (ii) above.		and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.
12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority,- (i) for residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one crore; (ii) for other than the (i) above	25% 30%	1) No CENVAT Credit on inputs to be availed 2) The value of land is included in the gross value 3) The amount charged is the sum total of the amount charged for the service including the fair market value of all goods or services supplied by the recipient in or in relation the service, whether or not supplied under the same contract or any other contract, after deducting amount charged for such goods or services supplied to the service provider, if any & the VAT/Sales Tax levied, if any. Where the fair value of goods or services so supplied is not ascertainable, the same shall be determined in accordance with the generally accepted accounting principles.

Apart from these abatements, in relation to certain services have been provided in Service Tax Valuation Rules. Though these are the provisions for valuation, these are indirectly called as abatements. The following services are covered there:

a. Works Contract –

a. In case of Original works- 60 %
b. In case of contract for maintenance or repair of goods- 30 %
c. In case of other Works Contract- 40 %

b. Contract involving supply of Food and other article of human consumption
a. Food supplied as a part of activity in restaurant- 60%
b. Food supplied as outdoor catering- 40 %

In the Delhi Chit Fund Association vs UOI (HYPERLINK "http://www.taxindiaonline.com/RC2/caseLawDet.php?QoPmnXyZ=ODc5MTA=" \t "_blank" 2013-TIOL-331-HC-DEL-ST) where writ was filed to quash notification no.26/2012-ST [post negative list] in so far as it seeks to subject the activities of a business chit fund companies to service tax. Delhi High Court allowed the writ holding that

a. Sl .No. 8 of notification No.26/2012-ST dated 20-6-2012 was quashed.
b. In a chit business, the subscription is tendered in any one of the forms of 'money' as defined in section 65B(33). It would, therefore, be a transaction in money. So considered, the transaction would fall within the exclusionary part of the definition of the word 'service' as being merely a transaction in money.

The services rendered by the foreman of the chit business, not being an activity of the nature of 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, would be out of the clutches of the definition

Pointers for practice

- The professional should ensure that where benefits of exemptions are claimed, the conditions prescribed for the same are complied with, failing which the benefit could be denied.
- The professional should also weigh the benefits of all the concerned alternatives before suggesting the exemption to be claimed where he acts in an advisory capacity. The availment of exemptions at times limits/ bars the whole or part of availment of cenvat credits. This needs to be confirmed and logic does not work here.
- The professional should also confirm that the assessee is really entitled to claim the benefit of exemption and this should be ascertained on a review of the records of the assessee. Where services are wrongly classified, or the values incorrectly determined under service tax, it could have a huge impact on availability of exemptions and service tax liability.

Other exemptions

1. Services provided by any person, for the official use of a foreign diplomatic mission or consular post in India, or for personal use or for the use of the family members of diplomatic agents or career consular officers posted therein – Notification No. 27/2012 dated 20.06.2012.

2. Under Renting of immovable property, the property tax paid on the property which has been let out, shall be allowed to be reduced from the taxable value – Notification No. 29/2012 dated 20.06.2012

   Example:

   Property tax paid for April to September = Rs. 12,000/-

   Rent received for April= Rs. 1, 00,000/-

   Service tax payable for April = Rs. 98,000/- (1, 00,000 -12,000/6) * applicable rate of service tax

3. Services provided to an exporter for the transport of the said goods by a goods transport agency in a goods carriage from:-
   a. any container freight station or inland container depot to the port or airport, as the case may be, from where the goods are exported;
   b. their place of removal, to an inland container depot, a container freight station, a port or airport, as the case may be, from where the goods are exported. – Notification No 31/2012 dated 20.06.2012

4. Services provided by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India – Notification No. 32/2012 dated 20.06.2012.

5. Services provided to a unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ and used for the authorised operations – Notification No. 40/2012 dated 20.06.2012.

6. Service provided by a commission agent located outside India and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him – Notification No. 42/2012 dated 20.06.2012.

7. Services as specified in the table below, provided by the Indian Railways, are exempt from Service tax upto and including the 30thSeptember 2012:-

    a. Service of transportation of passengers, with or without accompanied belongings, by railways in --
        (A) first class; or
        (B) an air conditioned coach.
    b. Services by way of transportation of goods by railways

    This exemption was provided vide Notification No. 43/2012 dated 02.07.2012.

PLACE OF PROVISION OF SERVICE RULES, 2012

Finance Act, 2012 has introduced various amendments in tax laws. These amendments are basically done with the aim of rationalizing the tax regime of the Country. Service tax law has attained majority in this year. Government has brought several new concepts in Service tax law. One such concept is dissemination of the concept of the 'Place of Provision of Service'. In terms of Section 66C of the Finance Act, the Place of Provision of Service Rules, 2012 have been issued vide Notification No.28/2012-ST, dated 20.06.2012 and with this the earlier Export of Service Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 have been repealed.

Importance of Place of Provision of Service-

Presently the Place of provision is relevant for the following purposes:

- Whether service has been provided in taxable territory
- Services provided to and from Jammu and Kashmir
- Assessees providing services from different locations without having Centralised Registration
- Export of service for exemption and Import of Service for liability of service tax on reverse charge basis
- Services provided to and from Special Economic Zone (SEZ)

Synopsis of the provisions-

Before going into the depth of each and every Rules of Place of provision of Service Rules, the following has to be understood for the ease of understanding the Rules.

Rule 14 states that later rule prevails over the earlier rules.

Place of provision of Service Rules make specific provisions in respect of certain specified services in Place of Provision of Service Rules. In respect of such services the specific rules will prevail over other rules. The following are the Specific services for which specified Rules has been given:

- Rule 9- Following are the specified services:-
    i. Services provided by a banking company, or a financial company, or a non-banking financial company to account holders;
    ii. Online information and database access or retrieval services;

iii. Intermediary services;

iv. Service consisting of hiring of means of transport, up to a period of one month.

- Rule 10- Any service of transportation of goods, by any mode of transport (air, vessel, rail or by a goods transportation agency), is covered here.
- Rule 11- Passenger Transportation Services
- Rule 12- Services provided on Board a conveyance

In respect of the other services, the following Rules will apply in following Sequence:

- Place of Provision of Service is taxable territory where both service provider and service receiver are in taxable territory, except the specified services covered under rules 9 to 12 [Rule 8]
- Place of Provision of Service is taxable territory if services covered under rule 4, 5 or 6 are provided even partly in taxable territory [Rule 7]
- In case of services relating to event, Place of Provision of Service is where the event is actually held [Rule6]
- In case of performance based services (relating to goods or recipient of service), Place of Provision of Service is where service is actually performed [Rule 4]
- In all other cases, Place of Provision of Service is the location of service receiver [Rule 3]
- If service does not fall under any of rules 4 to 12 and location of service receiver is not available, location of provider of service is the place of provision of Service [Proviso to rule 3]

Rule 14: Order of application of rules

This rule provides the manner in which the place of provision of service is to be determined in case where it seems prime facie that more than one rule of the place of provision rules is applicable. It is provided that in such cases the place of provision shall be determined in accordance with the rule that comes later and which merit equal consideration.

Illustration

An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai. If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India.

Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e., New Delhi. Place of provision being in the taxable territory, the service would be taxable in India. By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

Rule 13: Powers to notify description of services or circumstances for certain purposes

By virtue of this rule, Central Government is given power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service. However, any notification issued under this provision should be only for the reason of either prevention of double taxation or ensuring the taxation if it is being omitted.

Analysis as per CBEC's Education guide

The rule is an enabling power to correct any injustice being met due to the applicability of rules in a foreign territory in a manner which is inconsistent with these rules leading to double taxation. Due to the cross border nature of many services it is also possible in certain situations to set up businesses in a non-taxable territory while the effective enjoyment, or in other words consumption, may be in taxable territory. This rule is also meant as an anti-avoidance measure where the intent of the law is sought to be defeated through ingenious practices unknown to the ordinary ways of conducting business.

Rule 12: Place of Provision of services provided on board a conveyance

This rule intends to cover services like movie, music, video, software games, etc. provided on board against a specific charge, which is not supplied as part of the fare. The place of provision of such services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.

Illustration

A video game or a movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. The place of provision of this service will be Bangkok (outside taxable territory, hence not liable to tax). If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg, then the place of provision will be Delhi (in the taxable territory, hence liable to tax).

Rule 11: Place of Provision of passenger transportation services

As per this rule, the place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

Continuous Journey as per Rule 2(d) means a journey for which –

a. a single ticket has been issued for the entire journey; or
b. more than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover in the journey.

The term "Stopover" has been explained in CBEC's Education guide. It means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. All stopover do not cause a break in continuous journey. Only such stopovers will be relevant for which one or more separate tickets are issued. Thus, a travel on Delhi-London-New York-London-Delhi on a single ticket with a halt at London on either side, or even both, will be covered by the definition of continuous journey. However, if a separate ticket is issued, say New York-Boston-New York, the same will be outside the scope of a continuous journey.

Rule 10: Place of Provision of goods transportation services

The place of provision of transportation of goods services provided by any mode of transportation shall be the place of destination of the goods, (except when the same is provided by mail or courier). However, in case of GTA, the place of provision of service shall be the location of the person liable to pay service tax. The same is given in Rule 2(1)(d) of the Service Tax Rules, 1994. As per this rule, the person liable to pay tax shall be the person who pays, or liable to pay freight for the transportation of goods by road.

Rule 9: Place of Provision of Specified services

As per Rule 9, the place of provision of service shall be the location of the service provider in respect to the following services-

a) Services provided by a banking company, or a financial company, or a non-banking financial company to account holders;
b) Online information and database access or retrieval services;
c) Intermediary services;
d) Service consisting of hiring of means of transport, up to a period of one month.

Services provided by a banking company, or a financial company, or a non-banking financial company to account holders;

"Account" has been defined in the rule 2(b) to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule. Banking services provided to persons other than account holders will be covered under the main rule i.e., Rule 3 and the place of provision of such services shall be the location of receiver.

Examples of Services that are provided by a Banking company to an account holder:

a) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;
b) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

Examples of Services that are NOT provided by a Banking company to an account holder:

a) financial leasing services including equipment leasing and hire-purchase;
b) merchant banking services;
c) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;

Online information and database access or retrieval services:

As per rule 2(l), "Online information and database access or retrieval services" means providing data or information, retrievable or otherwise , to any person, in electronic form through a computer network.

Essentially these services are delivered over the internet or an electronic network which relies on internet or similar network for provision of service. For providing this service, human intervention is not required.

Examples of such services are-

a) Download of digital content
b) digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports;

However, the following shall not be treated as "Online information and database access or retrieval services"-

a) Sale or purchase of goods, articles etc over the internet;
b) Telecommunication services provided over the internet, including fax, telephony, audio conferencing, and videoconferencing;

c) A service which is rendered over the internet, such as an architectural drawing, or management consultancy through e-mail;
d) Repair of software, or of hardware, through the internet, from a remote location;
e) Internet backbone services and internet access services.

Intermediary services:

"Intermediary" means a third party that offers intermediation services. It acts as a conduit for providing services between two persons. Thus, an intermediary is involved with two supplies at any one time-

a) the supply between the principal and the third party; and
b) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition.

Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as "the main service"), but provides the main service on his own account.

CBEC in the education guide has clarified the following as regards to intermediaries.

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".

Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable.

In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services':-

a. Travel Agent (any mode of travel)

b. Tour Operator
c. Commission agent for a service [an agent for buying or selling of goods is excluded]
d. Recovery Agent

Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the 'main service'.

Following will NOT constitute means of transport:

a) Racing cars;
b) Containers used to store or carry goods while being transported;
c) Dredgers, or the like.

Following will constitute means of transport:

a) Land vehicles such as motorcars, buses, trucks;
b) Vessels;
c) Aircraft;
d) Vehicles designed specifically for the transport of sick or injured persons;
e) Mechanically or electronically propelled invalid carriages;
f) Trailers, semi-trailers and railway wagons.

Rule 8: Place of Provision of services where provider and receiver are located in taxable territory

The place of provision of service, which is provided by the service provider in taxable territory to a receiver in taxable territory, shall be the location of the recipient of service. There may be situations where the place of provision of a service may be determinable to be outside the taxable territory by virtue of Rule 4 to 6, but the service provider, as well as service receiver is located in the taxable territory. In such situations Rule 8 will be applicable and the place of provision shall be deemed to be in taxable territory, notwithstanding the earlier rules.

For Example, a tour operator in India organizes tour outside India. Here, the entire service is performed outside India. However, applying the rule 8, service tax will be payable.

Analysis of this Rule-

Thus, this rule is dangerous and a doubt arises in respect to the validity of the same. The rule appears to be against section 66B which provides for levy of service tax only when the service is provided or agreed to be provided in taxable territory. As seen in the above example, only a mere execution of agreement in India makes the transaction taxable in India, even though the service has been performed outside India. If that being the logic, shall the service be taxable in India if the agreement is executed outside India and service is actually performed in India???

Rule 7- Part performance of a service at different locations

This rule overrides Rule 4 (Performance or goods related services), Rule 5 (immovable property related services) and Rule 6 (event based services). This rule covers the situations where the actual performance of a service is at more than one location and occasionally one or more such locations may be outside the taxable territory.

This rule provides that where any service referred to in rule 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided. However, this rule is not intended to capture the minor services which are rendered in the taxable territory, like, mere issue of invoice, processing of purchase order or recoveries, which are not actually performed on goods.

Illustration given in CBEC Education guide is given below:

An Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, Colombo 55%).

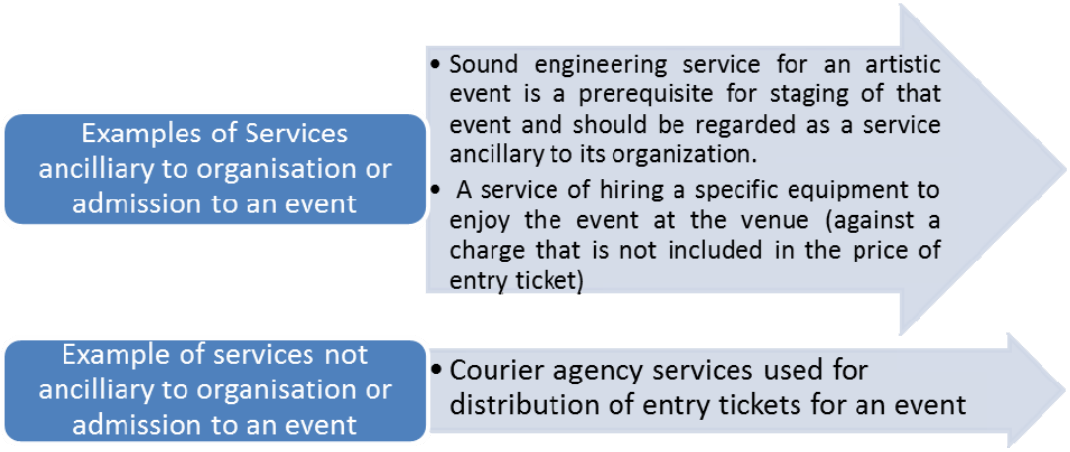
Notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, in this case Kerala.

Analysis of this rule-

As per section 66B, service tax is leviable only when service is provided or agreed to be provided in taxable territory. However, as seen in the above mentioned illustration, Rule 7 of the Place of Provision of Service Rules, 2012 also makes the service taxable even if the same is rendered partly in taxable territory. Thus, it can be so concluded that the provision given in section will prevail when there is a conflict between section and rules.

Rule 6: Place of Provision of Services relating to events

Place of provision of services provided by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational, entertainment event, or a celebration, conference, fair, exhibition, or any other similar event and of services ancillary to such admission, shall be the place where the event is held.



Rule 5: Place of provision of services relating to immovable property

In case of a service that is 'directly in relation to immovable property', the place of provision of service shall be the location of the immovable property, irrespective of where the provider or receiver is located. Also it is needless to mention that this rule doesn't apply if a provision of service has only an indirect connection with the immovable property.

As per the CBEC Education Guide, the following criteria will be used to determine if a service is in respect of immovable property located in the taxable territory-

(i) The service consists of lease, or a right of use, occupation, enjoyment or exploitation of an immovable property.

(ii) Service is physically performed or agreed to be performed on a specific immovable property (e.g., maintenance) or property to come into existence (e.g., construction).

(iii) The direct object of the service is the immovable property in the sense that the service enhances the value of the property, affects the nature of the property, relates to preparing the property for development or redevelopment or the environment within the limits of the property (e.g. engineering, architectural services, surveying and sub-dividing, management services, security services etc);

(iv) the purpose of the service is:

a) the transfer or conveyance of the property or the proposed transfer or conveyance of the property (e.g., real estate services in relation to the actual or proposed acquisition, lease or rental of property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament);

b) The determination of the title to the property.

Examples of Services which are land related-
(i) Renting of Immovable property, (ii) Surveying of land or sea bed, (iii) Supply of hotel accommodation or warehouse space, etc.
Examples of Services which are not land related-
(i) Services of an agent who arranges finance for the purchase of a property, (ii) Land or Real Estate Feasibility studies, say in respect of the investment potential of a developing suburb, since this service does not relate to a specific property or site.

Rule 4: Place of provision of performance based services

In respect of the following services, the place of provision of service shall be the location where the services are actually performed-

(a) Services in respect of goods that are required to be made physically available by the service receiver to the service provider, in order to provide the service. The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed.

(Examples of such services are repair, reconditioning, storage, warehousing, etc.)

However, where such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service. This is most common in the field of Information Technology. Also this sub rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or re-engineering for re-export, subject to conditions as may be specified in this regard.

(b) Services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

(Examples of such services are cosmetic or plastic surgery, beauty treatment services, photography services, Internet café services, etc.)

Rule 3: General Residuary rule

Rule 3 of Place of Provision of Service Rules is the residuary rule. It will apply only when a later specific rule is not applicable. Normally, the location of the service receiver should be the place of provision of service. However, in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the service provider.

Further as per Rule 14, where the provision of a service is, prime facie, determinable in terms of more than one rule, the place of provision shall be determined as per the rule that occurs later among the rules that merit equal consideration.

These rules are meant to determine place where the services are provided. In other to determine whether such services are exported, the Rule 6A of Service Tax Rules has to be examined. Same is discussed later by the paper writer.

Conclusion:

In practice it may be better for the officer/ consultant to apply the rules backwards starting from Rule 14 then 13… and so on. It is expected that many unintended implications maybe faced by various exporters of service and they may require to rectify the anomaly by way of representation. The Place of Provision Rules has expanded the provisions for interpretation while it has restricted the export benefits by introducing some of the mischief rules like rule 7, 8 and 14 (as explained above). These rules have widened the gap between the intention of the law not to export taxes and the implementing agencies. It is, thus, suggested that before undertaking any international transactions, the implication has to be checked out to avoid any tax litigation.

REVERSE CHARGE & JOINT CHARGE MECHANISM

Introduction

The new service tax law based on negative list taxation is effective from 1st of July 2012. Though there are a number of aspects and issues under the same, one of the main issue and concern is about the reverse charge and joint charge mechanism. This article discusses the concept for this mechanism w.e.f. 01.07.2012.

No Charging section w.e.f.1.7.12 on reverse charge

There is no separate charging section to tax receipt of services under reverse charge and section 66B is the solitary section for charging service tax. Post 18.4.2006 when 66A was inserted it created two deeming fictions, one treating the service as a taxable service and deeming the recipient as the provider of such taxable service. No such treatment exists in the present 66B which is applicable to service provided within India only. There is no nexus or link or connection between 66B & 66C(in terms of which the POPOSR have been framed and which rules creates a charge on the receipt of service from outside India). In other words the situation is back to the pre 18.4.2006 era and the tax has turned a full circle. It is also to be noted that the charge under RCM is levied by virtue of the Place of Provision of Service Rules, 2012, which is illegal because essential legislative functions cannot be delegated. In other words the POPOSR are rules framed by a delegatee who does not have the power, competence or jurisdiction to frame a charge in terms of the rules when the section does not contemplate such a contingency. It is pertinent to mention here that the above interpretation can be taken only if assessees prefer to challenge the POPOSR before the appropriate forum.

What is reverse charge?

Every person providing a taxable service is required to pay service tax at the prescribed rate. However in certain cases the service recipient is made liable to pay service tax on the services received. Since the person receiving services is made liable to pay service tax, the mechanism of collection of such tax is called as reverse charge (RCM).

This concept is set out in service tax law by virtue of section 68(2) by empowering the Central Government to notify services positively on which the said RCM would apply. To support this the person liable to pay service tax as defined in rule 2(1)(d) of the Service Tax Rules, 1994 also

includes service recipients.

Such a concept was in place even before introduction of the new scheme of negative based taxation. However, in addition to the concept of reverse charge a new concept of joint charge (recipient and provider of services liable to pay tax) is also introduced.

What is Joint Charge Mechanism?

Under the concept of joint charge, for one service the service provider as well as service receiver are made liable for payment of service tax to the extent notified. This liability is independent of the other person's liability. In other words the failure to comply with the provisions by one person on his part would not impact the compliance requirement of other person and vice versa.

What is covered under Reverse Charge?

Effective 01st July 2012 who are all covered under Reverse Charge Mechanism

After changes in the service tax law have been made effective, the notification which applies to reverse charge as well as joint charge is *Notification No. 30/2012-ST dated 20.06.2012 as amended by Notification No.45/2012-ST dated 07.08.2012*. As per the said notification, the following persons with regards to the corresponding services mentioned are liable for payment of service tax on reverse charge.

Sl.No.	Description of a service	Person Liable to pay Service Tax
1	Services by an insurance agent to any person carrying on insurance business	person carrying on insurance business
2	Services by a goods transport agency in respect of transportation of goods by road	Specified person (explained below) who is liable to pay freight
3	Services by way of sponsorship to anybody-corporate or partnership firm located in the taxable territory	Such body corporate or partnership firm
4	Services by an arbitral tribunal to any Business Entity	Such Business Entity
5	Services by individual advocate or a firm of advocates by way of legal services to any business entity	Such Business Entity

Sl.No.	Description of a service	Person Liable to pay Service Tax
6	Services other than – a. renting of immovable property; and b. speed post, express parcel post, life insurance and agency services provided by department of post to a person other than Government c. Service in relation to aircraft or a vessel, inside or outside the precincts of a port or airport by Government; d. Transport of goods or passengers by Government Provided by Government or local authority by way of support services to any Business Entity located in taxable territory	Such Business Entity
7	Services provided or agreed to be provided by a director of a company to the said company	Such Company
8	Services of renting of a motor vehicle designed to carry passengers provided by - any individual, - Hindu Undivided Family or - proprietary firm or - partnership firm, whether registered or not, - including association of persons wherein the service provider has ***claimed abatement*** of 60% following the conditions of the Notification No. 26/2012-ST dated 20.06.2012 And the services receiver is **business entity who is a body corporate** However if the service receiver is also in similar line of business, the service provider himself will have to pay service tax. For eg. Such service provided by to another person who will give the vehicle on rent.	Such business entity who is body corporate

Sl.No.	Description of a service	Person Liable to pay Service Tax
9	Any taxable services received by any person who is located in taxable territory from any person who is located in a non-taxable territory	The person located in taxable territory who is receiving such service
10	Services by director of company to company	Company receiving services

What is covered under Joint Charge?

Effective 01st July 2012 who are all covered under Joint Charge Mechanism

Similar to the reverse charge the same Notification No. 30/2012-ST dated 20.06.2012 as amended by Notification No.45/2012-ST dated 7.08.2012 deals with even joint charge as well. As per the said notification, the cases in which the joint charge would be applicable and to what extent is provided below :

Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1.	Services of renting of a motor vehicle designed to carry passengers provided by - any individual, - Hindu Undivided Family or - proprietary firm or - partnership firm, whether registered or not, - including association of persons wherein the service provider is ***not claiming any abatement*** And the services receiver is **business entity who is a body corporate** However if the service receiver is also in	60%	40 %

Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
	similar line of business, the service provider himself will have to pay service tax. For eg. Such service provided by to another person who will give the vehicle on rent.		
2.	Services of supply of manpower for any purpose or security services provided by - any individual, - Hindu Undivided Family or - proprietary firm or - partnership firm, whether registered or not, - including association of persons And the services receiver is **business entity who is a body corporate**	25%	75 %
3.	Services of service portion in execution of works contract provided by - any individual, - Hindu Undivided Family or - proprietary firm or - partnership firm, whether registered or not, - including association of persons wherein the service provider is ***not claiming any abatement*** And the services receiver is **business entity who is a body corporate**	50%	50%

Other relevant aspects

While following the reverse charge or joint charge mechanism the following aspects are relevant.

a. The service recipient is liable to pay service tax irrespective of the fact whether the service provider was exempted or not by virtue of small service provider exemption under Notification No. 33/2012-ST dated 20.06.2012. In other words even if the total value of service provider is less than 10 lakhs the service recipient wherever liable to pay service tax has to pay tax.

b. The exemption if any available to service provider (other than small scale service provider exemption) can also be availed by the service recipient. For eg. if the works contract is for construction of public road, then service recipient need not pay service tax.

c. The service recipient is given freedom to choose the methodology of computation of tax in case of works contract irrespective of the service provider's option to pay tax.

d. The service recipient is eligible to claim CENVAT Credit of service tax paid by both the service provider if any and also recipient by himself.

e. The service tax has to be paid by the service recipient on making payment to service provider if the payment is made within six months from the date of invoice. If it is not so paid the liability would be considered to have been arisen when the invoice for the service is raised or if it is delayed beyond the period of 30 days from completion of service the date of completion of service would be considered. In such cases the recipient would be liable to pay interest for the delay.

f. The specified persons in case of GTA services are as follows:

- any factory registered under or governed by the Factories Act, 1948
- any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India
- any co-operative society established by or under any law;
- any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder;
- any body corporate established, by or under any law; or
- any partnership firm whether registered or not under any law including association of persons;

Important point to be considered

As discussed above the service recipient has to pay tax once the service recipient makes payment to service provider within six months. However, if the service recipient fails to make the payment within six months then the liability of service tax would be deemed to have been arisen when the invoice for the service is raised or if it is delayed beyond the period of 30 days from completion of service the date of completion of service would be considered. Accordingly, the service recipient would be liable for the interest. Now the question that may arise is- **Whether service tax has to be discharged by service recipient by cash or can CENVAT credit be utilised to pay service tax on reverse charge?** As discussed, service recipient would be liable to pay interest under Rule 14 of CENVAT credit Rules, 2004 read with section 75 of the Finance Act, 1994. As regards to the use of CENVAT credit in respect of reverse charge in terms of Rule 9(1)(e) of the CENVAT credit Rules, the Challan evidencing such payment is the appropriate document. The Explanation below Rule 3(4) specifically bars use of CENVAT credit where the person liable to pay tax is the service recipient. Also Rule 2(p) excludes from the definition of output service, the service where the whole of service tax is liable to be paid by the service recipient. Hence, it is not possible to utilise the CENVAT credit for reverse charge payments and the same has to be paid only by way of cash, if the same has to be used for the purpose of availing Credit and utilising the same. The question which remains to be answered is whether in respect of output service under joint charge cenvat credit can be utilised for payment.

Conclusion

In some respects, the new scheme of taxation under reverse charge and joint charge mechanism is to enable wider coverage of especially unorganized sector and bring them into service tax net. However practically there may be lot of challenges which businessmen have to face initially to align the existing practices to the new scheme considering variations in business models.

CENVAT CREDITS AND PAYMENTS

Introduction

The concept of VAT provides that the indirect taxes paid in the earlier point of time are allowed to be set off against the tax payable at a later point of time subject to conditions laid down in the Cenvat Credit Rules, 2004. This facility was first introduced in the manufacturing sector by the V P Singh as MODVAT in the year 1986. In the first stage credit was allowed only for inputs in the manufacture of final output. It took 8 years for the Government to allow the cenvat credit of excise duty paid on Capital goods. In the Year 2002 this credit was extended to input services also. It may also require that the chain is not broken for maximization of the gain under this scheme. The credits are available to the service provider and consequently awareness of the provisions as well as the procedures is to be ensured for effective compliance under service tax. Assessees who are new to both central excise as well as service tax should note that cenvat credit scheme is a scheme which provides for a scheme of set off of the Central Excise duties on inputs and capital goods and on service tax paid on input services against the liability arising on taxable services or excisable goods. Thus where a service provider uses certain materials which have suffered duties of Central Excise at the time of procurement, for the purpose of providing a taxable service on which he is liable to pay service tax, the Central excise duties can be set off against the service tax liability. This set off facility would also be available in respect of service tax paid on input services used for providing the taxable service.

The set off scheme talked above is presently governed by the Cenvat Credit Rules 2004 which is common to both assessees under Central Excise as well as Service Tax. The Rules provide for cross-sectional credit i.e., a service provider not only gets credit for the service tax paid on input services but even for Central Excise duties on raw materials and capital goods used for providing the taxable service. The present sets of Rules are in force from 10th of September 2004 which is also the date from which the cross-sectional credit is admissible. This cross sector credit facility was introduced by P. Chidhambaram and this is the first taken by government of India to introduce the comprehensive Goods and Service Tax. The effect of these Rules would be to reduce the cash outflows for the service provider on account of service tax. An example would clarify this

Example – Ms.Lakshmi & Associates is a service provider whose service tax liability is Rs. 125000 and the service tax paid on input services like consultancy fees, technical testing, professional fees and security services put together is Rs. 65000 and the Central Excise duties on

the raw materials and capital goods as shown by the suppliers' invoices are Rs. 35000. If the opening balance of credits from the previous months is Rs. 10,000 the calculation of the service tax amount to be paid by Ms. Lakshmi Associates in cash is as follows –

Particulars	*Amount Rs*	*Amount Rs*
Service tax liability as stated above		125,000
Less: - Credits available for set off		
Opening balance of Cenvat credits	10,000	
(+) Cenvat Credit on raw materials and capital goods		
(+) Cenvat credit in respect of input services	35,000	
	65,000	
Total credits available for set off	_____	
	110,000	
Deducting the credits total from the service tax payable		
Amount of service tax to be paid in cash		(-) 110,000
		_____
		Rs. 15,000
		_____

But for the set off available in the above example, the service provider would have had to pay Rs. 125,000 in cash which would also have increased the cost of his services to his customer. The Cenvat credit can be utilized only to the extent such credit is available on the last day of the - month, for payment of duty or tax relating to that month.

The Cenvat Credit Rules 2004 specify the duties and the taxes which can be used for set off as well as the conditions to be followed by the service provider in order to claim these credits set offs. The credits would not be available in respect of the Central Excise duties on raw materials and service tax on input services used exclusively for providing an exempted service or manufacture of exempted goods. *In respect of capital goods, the credit of CE duties on such capital goods can be denied where they are used exclusively for manufacture of exempted goods or providing exempted services.* That means if the manufacturer or service provider is able to establish that at least part of the time of the Capital goods used for taxable service or dutiable goods so that he can take 100% cenvat Credit on the same capital goods. Moreover Cenvat credit on input services would be available on receipt of the Invoice provided the payment is made to the input service vendor within the three months. However in respect of inputs and capital goods,

the credit would be admissible once such inputs or capital goods reach the factory of the manufacturer.

Before we proceed with the discussion on Cenvat Credits, it is important to consider some of the critical definitions as relevant to a service provider. In this regard, the definitions of "input", "input service" and "capital goods" assume significance. The reader is advised to refer the Cenvat Credit Rules 2004 for the exact text though the definitions have been discussed below with reference to a service provider.

Concept of Input

Concept of input has been revamped with the objective of harmonization between input and input service, effective 01.04.2011, for better understanding the below mentioned table provides the snap shot.

For better understanding of the definition of input inclusions and exclusions which has been tabled below

Inclusions	**Exclusions**
All goods used in the factory by the manufacturer of the final product	Light diesel oil, high speed diesel oil, Motor spirit commonly known as petrol
Any goods including accessories cleared along with the final product and goods used for providing free warranty for final products.	Any goods used for the construction of a building or a civil structure or laying of foundation or making of structure for support of capital goods.
Similarly, goods used for generation of electricity or steam for captive use also constitute inputs.	Capital goods except when used as parts and components in manufacture of final products and also do not include the motor vehicles.
All the goods used for providing any output service.	Goods used primarily for personal use or consumption of any employee including food articles etc.
All the goods used for manufacture of Capital goods which are used in the manufacture of final products.	Goods having no relationship with whatsoever with the manufacture of final product.

Issues/Impact on the said amendments

- Employees using safety precaution uniforms, in order to protect themselves while discharging their duty of manufacturing activity, cenvat credits on such uniforms would be available.
- Goods such as storage racks used in stores, tables and chairs used in administrative department/ accounts department/ sofas chairs kept at receptions/ waiting rooms shall not be allowed as credits.
- Tools and equipments used for garden maintenance, tube lights, fans, exhaust fans fitted either at the manufacturing area or administrative areas shall not be allowed as input credits.
- Goods used as staff welfare measures, such as seasonal gifts to employees, complimentary gifts to clients during new year/ Dewali/ Christmas etc shall also be denied.
- Going by the principles of Cost Accounting Standards- 4, in order to arrive at the value of the cost of the product such manufacturer would have to factor in the above said cost in its final price and excise duty have to be paid on such final price, when manufacturer is denied enjoying the input credits on above said items, would certainly impact the margins of the manufacturer, which could result in undue tax planning.
- Such demarcation and denial of credits would create a barrier in implementing GST.

Considering the gamut of changes, which have been made without any care for the needs of the tax payers while starting off to assist them, these provisions would further complicate and confound the stakeholders.

Concept of Output service

"Output service" as per Rule 2(p) of Cenvat Credit Rules 2004, means any service provided by the provider of service located in taxable territory However output service shall not include the services covered under the negative list of services and where the whole of the service tax is liable to be paid by the recipient of service. If the service is notified as service, service tax is liable to be paid by both service receiver and service provider such notified service would still constitute the output service. Therefore where the receiver is required to pay the whole of the service tax, the same has to be paid fully in cash. The logic is that an input service credit cannot be used to pay the service tax on another input service. However whether this restriction would apply for input services other than GTA is being judicially examined. At same time under

negative list based taxation, there is a specific restriction on service receiver to discharge service tax liability under reverse charge by setting off against cenvat credits.

Concept of Capital goods

"Capital goods" as per Rule 2(a) of Cenvat Credit Rules 2004, means the following goods –

1. All goods falling under chapters 82, 84, 85, 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to Central Excise Tariff Act
2. Pollution control equipment
3. Components, spares and accessories of the goods specified at clauses (1) and (2) above
4. Moulds and dies, jigs and fixtures
5. Refractories and refractory materials
6. Tubes and pipes and fittings thereof; and
7. Storage tank
8. Motor Vehicles other than falling under the Tariff headings 8702, 8703, 8704, 8711 and their Chassis including Dumpers and Tippers

The aforesaid items should be used

(a) For providing output service or

(b) In the factory of the manufacturer of the final products, but does not include any equipments or appliance used in an office.

Components, Spares and Accessories in respect of (1) and (2) need not be fall under the same tariff heading of the capital goods it may be fall under any of tariff heading in CETA 1985. Credit on components, accessories and Spares in respect of goods specified in (4) to (7) is not allowed as capital goods since it is not specifically defined still you can get the credit as 'input' on satisfaction of the definition of 'input'.

Motor Vehicle credit other than falling under the heading 8702, 8703, 8704 and 8711 is now eligible for all the service providers and manufacturers.

Prior to 30.06.2012 Cenvat credit on Dumpers or tippers falling under chapter 87 are eligible only for those who are providing the output service of site formation and mining service, provided, such dumpers or tippers are registered in the name of the service provider and used for providing such taxable services.

After 01.07.2012 Cenvat credit on Dumpers and Tippers is available to all the service providers and to all the manufactures used in manufacture. Restriction of registration of Dumper and Tipper

in the name of the service provider is not applicable after 01.07.2012. That means service provider provided the service with the aid of the tipper without registering also can get the credit.

(B) Motor vehicles designed for transportation of goods covered under Tariff headings 8702, 8703, 8704, 8711 and their Chassis would also be regarded as capital goods where they are registered in the name of the service provider and who used such vehicles for

1. Providing the output service of Renting of such motor vehicle
2. Transporting the inputs and capital goods for providing any output service
3. Providing the output service of Courier Agency

Prior to 30.06.2012 credit on Motor vehicle is eligible to seven service providers only now credit on motor is available to all the service providers. If the service is provided with the aid of the motor vehicle without registering in the name of the service provider, credit on such motor vehicle is rightly deniable.

(C) Motor Vehicle designed to carry the passenger used for providing the output service of

1. Transportation of passenger
2. Renting of such motor vehicle
3. Imparting motor Driving skills

Driving School having the motor vehicle which is designed to carry the passengers providing driving skills to learners is eligible for the credit provided motor vehicle registered in the name of service providers. If the driving school having the Motor vehicle which is designed to carry the goods provided driving skills to learners, credit on the motor vehicle is not eligible.

Credit on components, spares and accessories used for the above motor vehicles is also eligible. The definition of capital goods under Companies Act 1956 or under Income Tax Act 1961 would not be valid here.

Concept of Input Service

i. The Finance Bill 20112 has now revamped the definition of 'input service' with the intention of providing clarity. This definition is effective from 01.04.20112 Input service" means any service used by a provider of output service for providing an output service or
ii. Used by the manufacturer, whether directly or indirectly in or in relation to the manufacture of final product and clearance of final products up to the place of removal

It includes services used in relation to –

- Modernization or renovation or repairs of the premises of provider of output service or an office relating to such premises
- Advertisement or sales promotion
- Market research
- Storage up to the place of removal
- Procurement of inputs
- Accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, business exhibition, legal service
- Inward transportation of inputs or capital goods and
- Outward transportation up to the place of removal

But excludes:

a) Service portion in the execution of a works contract and construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, to the extent used for
   - Construction or execution of works contract of a building or a civil structure or a part thereof or
   - Laying of foundation or making of structures for support of capital goods.

b) Services by way of renting of a motor vehicle should not be available as credits, insofar as they relate to a motor vehicle, which is not an eligible capital goods

c) Services such as general insurance service, servicing, repair and maintenance to an extent they relate to a motor vehicle, which is not an eligible capital goods except when used by:
   - A manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person
   - An insurance company in respect of a motor vehicle insured or re insured by such person

d) Services such as those provided in relation to outdoor catering, beauty treatment, health service, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefit extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee.

   For better understanding of the definition of input services inclusions and exclusions which has been tabled below

Inclusions	Exclusions
Any service used by the provider of output service for providing output service or Used by a manufacturer whether directly or indirectly in relation to manufacture of final product and clearance of final product upto the place of removal	Service portion in execution of works contract, construction services used in construction of a building or Civil structure or used for making the structure for support of capital goods.
Services in relation to • Modernization or renovation or repairs of the premises of provider of output service or an office relating to such premises • Advertisement or sales promotion • Market research • Storage up to the place of removal • Procurement of inputs • Accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, business exhibition, legal service) • Inward transportation of inputs or capital goods and • Outward transportation up to the place of removal	Services provided by ways renting of motor vehicles and the service provider is not entitled to credit on capital goods. If the service provider is entitled to credit on capital goods he is entitled to credit on renting of motor vehicles input services.
	Services such as those provided in relation to outdoor catering, beauty treatment, health service, cosmetic and plastic surgery, membership of a club,

	health and fitness centre, life insurance, health insurance and travel benefit extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee.
	Services of general insurance, servicing, repair and maintenance services relatable to motor vehicles which are not capital goods for the service providers. The cenvat credit on repair, maintenance services are eligible for motor vehicle manufacturer and for insurance company.

Issues on the said amendments

- Credit on motor vehicles except motor vehicles covered under 8702, 8703, 8704 and 8711 extended to all.
- Cenvat credit on services of renting of motor vehicles is not eligible for the credit except credit on motor vehicles is eligible for the credit.

The amendment to this again appears to be short sighted and not in line with the basic scheme of the cenvat credit. The main purpose of avoiding the cascading effect of multipoint taxes would be curtailed in the new provisions.

Exempted Service means

1. Taxable service which is exempt from whole of the service tax by the way of Notification
2. A service on which no service tax is leviable as per Section 66B
3. A taxable service whose part of value is exempted on the condition that no credit on inputs and input services are available.

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

Prior to 01.07.2012 there was an explanation to the definition of the 'exempted service' saying that trading of the goods is exempted service. From the 01.07.2012 there is no need of

explanation for trading of the goods since trading of the goods will cover under the (2) of the above.

Duties/taxes which can be considered for set off or availing credits

The duties and taxes which can be considered as per Rule 3(1) of Cenvat Credit Rules 2004 for set off or availment are as follows –

- Basic Excise Duty (First Schedule to CETA)
- Education cess on excisable goods and on taxable services
- Secondary Higher Education Cess of excisable goods and on taxable services
- Service tax u/s 66, 66A and 66B of Chapter V of Finance Act
- Service tax paid under reverse charge mechanism
- Counter Veiling Duty u/s 3 (3) of Customs Tariff Act on imported goods

  The additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified above (also called CVD, which is paid when goods are imported)

The aforesaid duties should have been incurred on input or capital goods received in the premises of the provider of output service on or after 10.09.2004 and the taxes should have been paid on any input service received by the provider of output services on or after 10.09.2004.
The service provider cannot claim credit of additional duty (SAD 4%) leviable under section 3(5) of the Customs Tariff Act, by virtue of proviso to Rule 3(1) of Cenvat Credit Rules 2004.

Utilization of the credits

The service provider who avails Cenvat Credit on inputs, capital goods or on input services can utilize the credits as per Rule 3(4) of CCR 2004, either for –

- Payment of excise duty on any final product or Reversal of Cenvat credit availed on inputs when the inputs are removed as such or after partial processing (other than for providing taxable services) or
- Reversal of Cenvat credits under Sub rule (2) of Rule 16 of Central Excise Rules, 2002 or
- Payment of service tax on output service or
- Reversal of Cenvat credit on capital goods where the capital goods have been removed as such other than for providing taxable services

Education cess and secondary higher education cess credit on service tax or on excisable goods can be utilized for payment of the Cess on service tax and/or cess on excisable goods. But the

credits of education cess and SHE cess cannot be used for payment of any other tax or duty. Education cess credit is to be used for payment of education cess and SHE cess credit is to be used for payment of SHE cess.

However credit of SHE cess can't be used to offset education cess liability, similarly credit of education cess can't be used to offset liability of excise duty.

When inputs/capital goods are removed outside the premises

As per Rule 3(5), when inputs or capital goods on which cenvat credit has been taken, are removed as such from the premises of the service provider, the cenvat credit availed would have to be reversed unless the removal was for providing taxable service. Where the removal of capital goods or inputs is for providing an output service, there would be no time limit for receipt of the same back into the premises of the service provider. However, the service provider is advised to track the movement of inputs and capital goods using of challans and registers to avoid flouting of Rules and end up with disputes/ demands.

In case of capital goods removed after use, where the credits are to be reversed, the reversal would be reduced on SLM basis with as specified below for each quarter of a year or part thereof from the date of taking the cenvat credit, namely

(a) For computer and computer peripherals

For each quarter in the first year @ 10%
For each quarter in the second year @ 8%
For each quarter in the third year @ 5%
For each quarter in the fourth and fifth year @ 1%

(b) For capital goods other than computer and computer peripherals at 2.5% per quarter.

- If the capital goods removed as scrape or waste the manufacturer shall pay duty equal to duty on transaction value. If the service provider removed the capital goods as scrape and waste he need pay the duty on transaction value since the earlier Sub rule (5A) is talking only about the manufacturer .This was the position prior to 17.03.2012.

After 17.03.2012 the amount required to be reverse when the capital goods removing after use or as waste and scrape is amount calculating @2.5% per each quarter after taking the cenvat credit or duty leviable on transaction value of Capital goods or on scrape whichever is high.

Rule 3 (5) has also been amended to further include that the reversal of credit/ payment of duty would not be required on inputs when they are removed under free warranty. For this purpose, free warranty means 'warranty' provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer.

When inputs/capital goods are written off fully

When inputs or capital goods before being put to use are written off fully partially or a provision for such write off is made in the books of accounts then the manufacturer or service provider shall pay an amount equivalent to the cenvat credit taken on such input or capital good. Subsequently where such input or capital good is put to use for manufacture or providing taxable service, the manufacturer or service provider would be entitled to take credit of the amount paid earlier subject to the other provisions in the Rules.

Earlier these provisions were applicable to manufacturer only. From 07.07.2009 vide notification 16/2009 it is made applicable to service providers as well.

The following changes shall have immediate effect from 01.03.2011

Rule 3(5B) is also amended and now the rule requires that the Cenvat credit availed to be paid back even if the Cenvat availed inputs or capital goods are partially written off. Earlier it was required only when the goods are fully written off. This change is effective from 1st March 2011.

Restriction in case of capital goods

As per Rule 4(2)(a) of CCR 2004, the cenvat credit in respect of capital goods received in the premises of the service provider who provides taxable services, shall be taken for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year and the balance in the subsequent financial year if the capital goods are in possession of such service provider. If the service provider had not taken any credit on a capital goods in the first financial year in which it is received he can utilize 100% credit in the subsequent financial year. This view was supported in the case of Keihin Fie Pvt CCE, Pune-III 2007 (213) E.L.T 637. In case the assessee is eligible to avail exemption under a notification based on the value of clearances in a financial year whole of the credit on capital goods can be availed in the first year itself. The criterion as to possession would not apply to components, spares, accessories, refractories and refractory materials, moulds, dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of First Schedule of Central Excise Tariff Act. Moreover, in case the capital goods are cleared as such in the same financial year of its purchase), then balance credit can be claimed, and subsequently entire credit needs to be reversed. The following changes shall have immediate effect from 01.03.2011

Rule 4(2) state that the Cenvat credit would be allowed even on capital goods which are received outside the factory by a service provider and also available to the manufacturer provided they are used for generation of electricity for captive used in factory.

With effect from the 01.04.2012 service provider can remove Capital goods to any place for the provision of output service without reversal of cenvat credit subject to documentary proof of location of the capital asset. (Forth proviso to Rule 4(2)(a))

Where cenvat credit is claimed on capital goods, the duty amount cannot form part of the cost of the capital goods for the purpose of claiming depreciation u/s 32 of Income Tax Act 1961 by virtue of Rule 4(4) of CCR 2004. One cannot claim both the cenvat credit up to 50% of duty in the first year and depreciation u/s 32 of Income Tax Act, 1961 for the next 50% of duty and thereafter next year claiming the cenvat on remaining 50% credit. If depreciation is claimed on the duty amount on which cenvat credit had been claimed earlier, the credit would have to be reversed.

Capital goods may even be acquired on lease, hire purchase or loan agreement from a financing company u/r 4(3) and credits would still be available as long as documentation is in order.

Can the inputs or capital goods on which cenvat credit is claimed, be sent out to a sub contractor for processing?

The input or capital goods on which credit has been claimed, can be sent out under Rule 4(5)(a) of Cenvat Credit Rules 2004 to a job worker for processing, testing, re-conditioning etc. The goods after processing, testing etc are to be received back in the premises of the manufacturer within 180 days from the date of sending the same. Where it is not so received, the cenvat credits availed earlier in respect of the inputs or capital goods needs to be reversed which can again be claimed back once the goods are received any time after the expiry of the said period of 180 days. There is no restriction to the service provider as to receipt within 180 days in case of capital goods. The goods are normally sent under a pre-numbered challan which would consist of details like, name and address of the job worker, the description of the goods, value with duty amount, nature of processing required and the date on which the items are expected. The challan can have a provision for authenticating the receipt and despatch details at his end along with details of dispatch like, goods sent back, scrap generated if any, processing undertaken, date of sending and details of invoices raised if any. The service provider can also maintain a register to keep track of material movements showing the issue and receipt details.

The following amendment is effect from 01.03.2011

The Rule 4 (7) is amended to state that when any payment made towards the input service is returned then the manufacturer or service provider who has taken the credit on such input service shall pay proportionate amount to the cenvat availed in respect of such amount returned. This payment can be by utilizing the Cenvat credit or otherwise.

Service tax credit can be utilized from the day on which bill or invoice or challan is received provided payment for such service is made within the 3 months. If the payment had not made along with service tax to the service provider, after the end of the 3rd month credit taken has to reversed and again credit can be availed on the date of payment.

Cenvat Credits – Refund for exporter of service

As per Rule 5 of CCR 2004, where any input or input service is used in providing an output service which is exported (Rule 6A of Service Tax Rules, 1994), the Cenvat credit in respect of that input or input service can be claimed the refund of Excise duty on input and service tax paid on input services subject to the conditions laid down by the Board.

Refund amount = (Export turnover of goods + Export turnover of services)* Cenvat credit/total turnover

Export turnover of services means

Amount received during the relevant period of export of services + Provision of the service is completed during the relevant period of export of services for which the advance had taken period prior to the relevant period of export of services.- advances received during the relevant period of export for which provision of service has not completed by the end of relevant period of export.

Total Turnover means sum total of

1. Value of dutiable goods+ value of exempted goods + value of exported goods
2. Value of export turnover determined above + value of all other services during the relevant period of export.
3. Value of all the input removed as such against invoice

The above provision will apply for the exports made on or after 01.04.2012 for the exports made prior to 01.04.2012 old provision of Rule 5 will apply. In the old provision exporter has to first utilize the credit towards the domestic clearances and then can go for refund of credit from the department. Now the Rule 5 is talking only about refund of credit without going for utilization of credit for domestic clearance.

From 01.07.2012 a new provision was introduced to allow the refund of cenvat credit for the service providers whose service is covered reverse charge mechanism and he is unable to utilize the credit for the payment of service tax on output activity.

- This refund shall not be allowed where the provider of output service avails of either –
- Drawback under the Customs and Central Excise Duties drawback rules 1995 or
- Claims rebate of duty under Central Excise Rules 2002 or
- Claims rebate of service tax under Service Tax Rules, 1994 in respect of such duty/tax.

Rule 6 – Reversal of Cenvat Credit

There is been a complete change in the options available to manufacturer and/ or service provider, the essence of which is discussed below, this rule is effective from 01.04.2011

The heading of the rule has also been changed as 'Obligation of a manufacturer or producer of final products and a provider of output service'. Earlier the heading was 'Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services.

This very change in the title of the rule will have serious implication as the argument of non applicability of the rule 6, when the manufacturer manufacturing dutiable goods also provides services which are not liable to service tax would not stand. The converse of which also holds good. In other words the assessee is curtailed to take the benefit of input/ input services, when the manufacturer was providing exempt services and service provider manufacturing exempted goods. Further previously with trading not being considered either as exempted goods or exempted services, the benefit of input services which were commonly used for trading activity was possible, now with the change in definition of exempted service to include trading and also with the omission of the words "Activities in relation to business", such arguments would not stand in the law.

The following are options available under the present set of rules.

i. Sub Rule 1 provides that the Cenvat credit benefit would not be allowed on inputs or input services which are used in or in relation to manufacture of exempted goods or for provision of exempted service. Earlier the rule has the wordings that the credit would not be allowed on 'input or input service which is used in the manufacture of exempted goods or for provision of exempted service'. Due to this change, now the assesse is prevented from availing full credit on input or input service which are used in relation to manufacture of exempted goods or provision of exempted goods.

ii. The sub rule 2 provides for maintenance of separate records in more detailed manner in respect of receipt, consumption an inventory of inputs and the receipt and use of input services used

a. in or in relation to manufacture of exempted goods;
b. in or in relation to the manufacture of dutiable final products excluding exempted goods;
c. for the provision of exempted services;
d. for the provision of output services excluding exempted services.

iii. The second option is that the assese would be required to pay the tax at 6%, when we wishes not to maintain records as discussed above Earlier sub rule 3 required that the provider of output service providing exempted service to pay 5% on the value of exempted service and avail the Cenvat credit fully (unless any input/input service is exclusively used for exempted service). Now this rate of 5% has been increased to 6%.

iv. In addition to the above two options. The new third option would be to maintain separate accounts for the receipt, consumption and inventory of inputs as provided in the new rule and pay an amount as determined under sub-rule (3A) in respect of input services. In addition to the above changes, a new explanation has been added to state that the payment of amount of 6% as discussed above would be deemed to be Cenvat credit not taken for the purpose of an exemption wherein exemption is granted on condition that no Cenvat credit of inputs and input services shall be taken.

The calculations / steps for ascertaining provisional credits in relation to exempted activity would be as follows -

1. Ascertain the cenvat credit attributable to inputs services used for manufacturing exempted goods/ providing exempted services, if any and let the credits be A.
2. Ascertain the cenvat credits provisionally in respect of inputs services used for exempted activity – (B/C) * Total credits taken during the relevant month not including amount A indicated above.

For this purpose, B = total value of exempted activity provided during the preceding financial year

C = total value of dutiable goods manufactured and removed during preceding financial year + total value of exempted services and taxable services provided during preceding financial year.

At the end of the relevant financial year, the following calculations would have to be made –

1 Ascertain the cenvat credit attributable to inputs services used for manufacturing exempted goods/ exempted services if any and let the credits be H.

2 Ascertain the cenvat credits in respect of input services used for providing exempted services/ goods during the financial year as follows – (J/K) * Total credits taken during the relevant financial year not including amount H indicated above.

For this purpose, J = total value of exempted services / goods provided during the relevant financial year

K = total value of dutiable goods manufactured and removed during relevant financial year + total value of exempted services and taxable services provided during relevant financial year.

For the purpose of Rule 6 of cenvat credit Rules, exempted means the following

Activity	Status	Treatment
Trading activity	Exempted service	Difference between the cost of goods sold and sale price or 10% of cost of goods sold needs to be considered
Goods attracting 1% rate of duty as specified in notification 1/2011, 2% w.e.f 17.03.2012 vide notification no 16/2012 CE	Exempted Goods	Turnover of such 1% rated goods to be considered
Payment of tax on taxable services, with a condition that benefit of credit of input and input services is not available	Exempted Service	The portion of value in respect of taxable services on which service tax is not paid would be treated as the value of exempted services .

Where the credits ascertained finally in relation to exempted activity are less than the credits ascertained provisionally, the service provider can take credit for the differential amount.

Where the credits ascertained finally in relation to exempted activity are more than the credits ascertained provisionally, the service provider would have to pay the differential amount on or before the 30th June of succeeding financial year. Where the payment is made after 30th of June, interest at 24% p.a. would be payable for the period of delay.

As per Rule 6(6) of Cenvat Credit Rules, 2004, if excisable final products are dispatched without payment of duty to EOU/SEZ/EHTP export of goods/deemed exports goods supplied against international competitive bidding in terms of notification 12/2012 CE, supplied for foreign diplomatic mission or consular missions or career consular offices or diplomatic agents such supplies need not be considered as exempted goods and the assessee need not reverse cenvat credit or pay any amount.

Wef 1.4.2011, as per Rule 6(6) [renumbered and substituted by Rule 6(7) wef 1.7.2012] we in case a service provider providing taxable services without payment of service tax to a unit or a developer of a SEZ without payment of service tax for their authorized operations, then rule 6 of Cenvat credit rule would not be applicable.

Further as per renumbered rule 6 (7) has been introduced which says Cenvat credit on inputs and input services need not be reversed when the export of services are made.

A new rule 6 (8) has been introduced which says exempted services shall not include a service which satisfies conditions specified under rule 6A of Service Tax Rules, 1994 and payment for the service is received in convertible foreign exchange which has been received within the time limit or within extended time limit given by RBI from time to time

Readers may examine whether the new provision is an improvement over the earlier one which has taken a few years to be understood.

Documentation work to be done

The service provider should ensure that he claims the cenvat credits on a valid document satisfying the requirements of Rule 9 of Cenvat Credit Rules 2004. The documents may be -

- An invoice issued by a manufacturer
- An invoice issued by an importer
- An invoice issued by a registered first stage or second stage dealer
- Supplementary invoice issued by a manufacturer/importer
- Bill of entry

- Certificate issued by an Appraiser of Customs in respect of goods imported through a Foreign Post Office
- A challan evidencing payment of service tax where the service receiver is liable to pay u/s 68(2)
- An invoice, bill or challan issued by a provider of input service on or after 10.09.2004
- An invoice, bill or challan issued by an Input Service Distributor

The service provider would also be better off maintaining a cenvat credit register disclosing the details as to the cenvat credits being claimed. The register can disclose details as to the name of the supplier/input service provider, bill number, date, basic value of duty/tax, education cess, SHE cess, assessable value, GRN reference for material receipts, payment reference for input services, column for debits, credits balance. This record would facilitate the task of preparation of returns which would then be easier.

Rule 9(1)(bb) has been introduced whereby it debars the taking of credit of service tax paid on a supplementary invoice of a provider of output service where the duty was short levied by reason of fraud, collusion or any willful mis-statement or suppression of facts or contravention of the provisions. This rule would get attracted depending on the facts of each case.

Where the assessee opts for ascertaining the credits as per the method prescribed under Rule 6 of CCR 2004 on a provisional basis

The following particulars would have to be intimated to the Superintendent of Central Excise while exercising this option –

- Name, address and registration number of the provider of output service/manufacturer of goods
- Date from which the option is to be exercised
- Description of dutiable goods or output services
- Description of exempted goods or exempted services
- Cenvat credit of inputs and input services lying in balance as on the date of exercising the option under this condition

Once the credits have been determined finally and the excess credits availed paid back or credits short availed have been availed, the following details would have to be sent to the SCE within 15 days from date of payment or adjustment –

- Cenvat credits attributable to exempted goods and exempted services for the whole financial year, determined provisionally on monthly basis

- Credits attributable to exempted goods and exempted services for the whole financial year determined finally
- Amount short paid with the date of payment of the said amount
- Interest payable and paid on the shortfall
- Credits taken on excess payments made earlier

Concept of input service distributor

Where the service provider is providing the output service from the multiple locations can receive input services invoices at one location and distribute the credit on input services to various locations of the service provider subject to the following conditions.

1. Credit distributed shall not exceed the amount of service tax paid on input service
2. Credit shall not be distributed on input service which is used exclusively in providing the exempted service
3. Where an input service which is used exclusively in one unit entire credit on such input service shall be distributed to that unit only.
4. Where an input service is used for more than one location credit on such input shall be distributed to all such units on the basis of turnover of each unit to the total turnover of all the units.

This facility could be used where the manufacturer or service provider has a system of receiving the bills for input services at the Head Office or at branch offices but the credits are to be distributed to the registered service units providing taxable services or the factories engaged in manufacturing. Where the assessee has independent registration for the various service units/factories, this scheme would be particularly useful. The scheme requires the Head Office/branch office seeking to distribute the cenvat credits to the individual units, to register under service tax as an ISD (Input Service Distributor).

Once registered, the Head Office/branch office would issue an invoice, bill or a challan to each of the recipient to whom the credit is sought to be distributed. The invoice, bill or challan is to be serially numbered and shall contain –

1. Details as to name, address and registration number of the provider of input services
2. Details of the document/bill given by such input service provider
3. Name and address of the input service distributor
4. Name and address of the recipient of the distributed credit
5. The amount of the credit that is sought to be distributed

Readers should note that the concept of input service distributor would enable in distributing the credit of service tax on input service whereas what is envisaged u/r 7A is availment of credit of excise duty on inputs and capital goods. The availment u/r 7A would require the office or branch passing on the credit to register as a dealer under central excise and maintain registers recording the movement of materials i.e. receipt from supplier and issue to premises where credits is to be availed as well as the details as to duty per unit paid and duty per unit passed on to the premises where credit is to be availed. A dealer's invoice/bill or challan would have to be raised which would indicate the amount of credit passed on along with the description of goods, value, details of consignor/consignee etc. A quarterly return within 15 days from the end of the quarter would have to be filed by the consigning office/branch/unit.

Payment of service tax

The payment of service tax is to be made to the credit of the Central Government by the 5th of the month immediately following the calendar month (6th of the succeeding month instead of 5th if payment is made electronically) in which the payments towards taxable services are received, as per Rule 6 of Service Tax Rules 1994. For the period ending March 31st, the payment would have to be made by the 31st of March and not by 5th of April of the calendar year. However Finance Bill 2011 has introduced the concept of Point of Taxation Rules 2011, for understanding the concept and its relevance.

In case the service provider happens to be an individual, proprietary firm or a partnership firm, the payment has to be made by the 5th of the month immediately following the quarter (6th of the month succeeding the quarter if payment is made electronically) in which the payments towards taxable services are received. The cenvat credits position consequently would be determined as at the end of the relevant month/quarter as the case may be depending on the payment period.

Assessees paying service tax of more than Rs 10 Lakhs are now compulsorily required to pay service tax through internet banking.

Assessees would also have the option to pay service tax in advance and then adjust the amount paid towards the service tax liability on services provided. Intimation would have to be given to the SCE within 15 days once payment is made. For this, rule 6(1A) has been introduced in Service Tax Rules 1994.

Can Cenvat credits be transferred?

As per Rule 10(2) of Cenvat Credit Rules 2004, where a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of business to a joint venture, with the specific provision for transfer of liabilities of such business, then such provider of output service shall be allowed to transfer the Cenvat credit lying unutilized in his accounts, to such transferred, sold, merged, leased or amalgamated business subject to permission/ following procedure as prescribed.

The stock of inputs as such or in process or the capital goods are also to be transferred to the new site/owner and the accounting of such inputs/capital goods should be to the satisfaction of the Assistant Commissioner of Central Excise/Deputy Commissioner of Central Excise.

Can the old balance of Cenvat Credit be brought forward?

The service provider can bring forward the unutilized credits lying in his books as on 10.09.04 in respect of the credits availed under Service Tax Credit Rules 2002 and utilize the same in accordance with these rules.

Can credits be taken on inputs and capital goods received under invoice, bill or challan issued by another office of service provider?

Rule 7A of CCR 2004 allows distribution of credits on inputs by the office or another premises of output service provider. Here, the credits can be taken on inputs as well as capital goods received on basis of an invoice or a bill or challan issued by an office or premises of the said provider of output service which receives invoices towards purchase of inputs and capital goods. The assessee would have to note that provisions applicable to first stage and second stage dealers under Central Excise have been made applicable in regard to the office issuing such invoice/bill and distributing credit.

Recovery of cenvat credit wrongly taken or erroneously refunded

Where the credit was taken and utilized wrongly or erroneously refunded the same shall be recovered along with the interest from the service provider under Section 73 and 75 of the Finance Act, 1994.

Confiscation and penalty in case of wrong availment of Cenvat Credits

As per Rule 15(1) of CCR 2004, where cenvat credit taken or utilizes in respect of inputs or capital goods or in respect of input services is wrongly or in contravention of these Rules, then all

such goods shall be liable to confiscation and the penalty would be Rs.2000/- or duty on such goods or services whichever is greater.

Where under Rule 15(3) credit on inputs or input services or on capital goods has been taken or utilized wrongly by way of fraud, collusion, willful mis-statement or suppression of facts or through contravention of any of the provisions of the Finance Act or rules made there under, with the intention to evade payment of service tax, the service provider shall be liable to pay penalty equal to service evaded in accordance with section 78 of the Finance Act.

Prior to 27.02.2010 Sub rule (1) will apply only to Manufacturers from 27.02.2010 Sub rule (1) will apply both to the manufacturers and service providers. Bear reading of the sub rule (1) and sub rule (2) gives an impression that penalty under sub rule (1) and (2) is equal to Cenvat wrongly taken.

When the Rule 3 is talking about fraud, suppression of the fact penalty equal to cenvat wrongly utilized. If there is no fraud, suppression of the fact penalty will be leviable under Sub rule (1). It is settled position of the law that when there is no element of mensrea cenvat availed with the bonafide belief imposition of the penalty equal to cenvat taken under Sub rule (1) is not sustainable. In such situation penalty leviable is minimum penalty prescribed under Sub rule(1) that is Rs. 2000/-. Bagpat Cooperative Sugar Mills Ltd Vs CCE, Meerut-II 2007 (212) E.L.T 77 (Tri-Del) it

Pointers for Practice

1. The area of Cenvat credit is an area where cost control is possible as also tax planning. Very often, the assessees have been found to have neglected the Cenvat credits aspect and consequently pay more tax in cash.
2. At times non consideration of the aspects of credit maybe the difference between getting an order or losing one. This is especially true now that the majority of goods are liable for central excise and services for service tax. Therefore the need to avoid breaking the cenvat chain is important.
3. Where ever taxable and exempted services are provided, the segregation of the inputs and input services towards taxable and exempted services has also been found to be inaccurate. This results in many assessees giving up on credits rather than maintaining detailed records and availing the credits that one is entitled to as an assessee.

4. The assessees should also ensure that where ever services are sub-contracted, the sub-contractor charges service tax as the same can be availed as credit provided a proper bill as discussed earlier is available.
5. The definition of input service should be noted carefully as it differs from that of inputs and capital goods in such a way that the service provider can post 1.4.2011 avail credits in respect of services used in relation to modernization, renovation and repairs of his premises.
6. Where the service provider has substantial service exports, he should make it a point to go in for either refund of credits or rebate of service tax both of which have been explained in a separate chapter. The IT sector could therefore go in for these benefits if exports are substantial.
7. The professional would have to be careful where the assessee opts for provisional determination of credits as any change in value of either goods or services subsequent to 30th of June after end of financial year could lead to a situation where the credits for the year would have to be determined once again. This may happen as a result of any audits being carried out by the department or internally by the management itself.
8. It may be noted that there is no time limit specified for availment of missed out credits.

VALUATION UNDER SERVICE TAX

As mentioned earlier service tax is charged under section 66B of Finance Act, 1994 at a prescribed percentage on 'Value' of taxable service provided or agreed to be provided. This chapter gives the provisions and mechanism to determine the value on which the service tax is payable. Since it is a tax on services which is intangible, valuation of such services for the purpose of charging the tax would assume significance. This is because unlike tangible property in the form of goods which can be compared to other goods in terms of physical attributes and quality, services cannot be compared easily. The service provided by a technician need not be of the same quality as that provided by another technician. Even if they were to be compared, the comparison would be very difficult as the qualities that have to be compared would be intangible. There is also a very significant factor of "what the traffic would bear" in services. Moreover, there could be significant differences between the cost of providing a service and the value that is charged to the client / customer for the same signifying the margins for the service provider. The value of experience may be difficult to estimate.

Historically in the area of valuation disputes are more as the tax collector interprets the provisions to his comfort without appreciating the intention. Till 2006, there were no major issues under valuation; however with the insertion of the Service Tax (Determination of Value) Rules 2006, wef 19.4.2006 this segment has witnessed substantial litigation

What is the main basis for valuation?

In terms of section 67, the amount chargeable to service tax is the gross amount charged for such service provided or agreed to be provided as long as the consideration is wholly in monetary terms. The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

Where the assessee follows a method of charging one lump-sum amount including service tax, the value determined with the addition of service tax cannot exceed the amount charged by the assessee. For example where the value including service tax @ 12.36% is Rs. 10 lakhs, the service tax would be determined as follows – ((Rs. 10 lakhs/112.36)*.12.36) = Rs.110003.5. The value net of service tax on which such tax is charged = Rs. 1000000 – Rs. 110003.5 = Rs. 889996.4

"Gross amount charged" as per explanation (c) to section 67, includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.

Budget 2008 introduced a concept of associated enterprise wherein for a transaction with associated enterprise, the gross amount charged would also cover credit or debit to any account by whatever name called including accounting in suspense account in the books of account of person liable to pay service tax.

Where the consideration is not wholly in monetary terms, the value would be such that with the addition of service tax would be equivalent to the consideration. The calculation of service tax would be the same as explained in the earlier example. In short, the equivalent money value of the non-monetary consideration should be considered. (Though there seems to be drafting error, based on the interpretation placed by the board this proposition exists).If the consideration is partly in money and partly in other form, the amount charged monetarily and the equivalent value of the non-monetary consideration should be considered.

Where the consideration for a service which cannot be determined, the assessee would have to refer the Service Tax (Determination of Value) Rules 2006 in order to ascertain the value. As per Rule 3 of the said Rules, the value shall be the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade. This proposition would not work and such a price is not possible to be arrived at, but may have to be judicially confirmed in this decade.

Where this amount is not available, the equivalent money value of the consideration should be determined and this should not be less than the cost of providing the service. This is possible but may at times be very low as in many services, the actual costs maybe between 1% to 70%. (Too much of subjectivity).

Can the Central Excise Officer question the valuation?

Where the Officer is satisfied that the value has not been determined in accordance with the provisions of this Act or the Rules, he can issue a Show Cause Notice to the assessee to show cause as to why the value should not be as per amount stated in such notice as per Rule 4 of Service Tax (Determination of Value) Rules 2006. The assessee is to be given reasonable opportunity of being heard before the Officer can proceed with the task of determining the value in accordance with the provisions of the Act and the Rules. It is felt that the judicial precedents in

regard to valuation of goods under central excise and Customs maybe be useful in defending such valuation disputes and may not end up with any revenue for the Government.

Whether the gross amount charged for the service would include charges reimbursed by the service receiver?

In principle, no tax can be payable on reimbursement of expenses incurred on behalf of the service receiver. The use of the word 'such' in the valuation provision it implies that tax can levied only on the amount charged for the service. Till 18.04.06, reimbursements were not liable. However, the Service Tax (Determination of Value) Rules 2006 were introduced with effect from 18.04.06. As per Rule 5 of the said Rules, the gross amount charged shall include the cost and expenditure incurred in connection to the taxable services charged to the service receiver. No deduction is allowed for the reimbursement of expenses unless such expenses are incurred by the service provider as a pure agent of the service receiver. The concept of pure agent requires the service provider to satisfy certain conditions if the reimbursement of expenses is not to suffer service tax.

"Pure agent" as per explanation (1) to Rule 5(2) of Service Tax (Determination of Value) Rules 2006, means a person who –

1. Enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service
2. Neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service
3. Does not use such goods or services so procured and
4. Receives only the actual amount incurred to procure such goods or services

The conditions to be satisfied in this regard as per Rule 5(2) are as follows –

1. Service provider to act as a pure agent of the recipient of service while making payment to third party for the goods or services procured
2. Service receiver to receive and use the goods or services procured by the service provider on his behalf
3. Service receiver to be liable to make payment to the third party
4. Service receiver to authorise the service provider to make payment on his behalf
5. Service receiver to know that the goods and services, for which payment has been made by the service provider, shall be provided by the third party

6. The payment made by the service provider on behalf of the recipient of service is to be separately indicated in the invoice issued by the service provider to the recipient of service
7. The service provider recovers from the recipient of service only such amount as has been paid by him to the third party
8. The goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account

Taxation of Reimbursements

There has been an important judgment of Delhi High Court in the case of Intercontinental Consultants And Technocrats Pvt Ltd vs. UOI & Anr [2012-TIOL-966- HC-Del-ST] changing the position of law pertaining to valuation covering reimbursements. Held the Rule 5(1) has been struck down in Intercontinental decision mentioned at supra. Till the rule is struck out of the Valuation Rules. In case of separate collection of expenditure or costs is done, better to ensure that the pure agent conditions under Rule 5 (2) are satisfied.

Therefore one needs to understand the differences between the expenses incurred by the service provider during the course of providing the taxable service and expenses incurred by the service provider on behalf of service receiver. One of the important conditions is that liability for the payment of expense should be primarily on the client. If the service provider pays any tax, duty etc which is actually a liability of the service receiver and get reimbursed from the service receiver it will cover under concept of pure agent provided other conditions are satisfied.

Taxation of Free Issue Materials

As far as the value of materials supplied free of cost is concerned, authors view is that normally the value of materials so supplied by customer is not to be included in the value of services for charging service tax. This is considering the fact that materials sold during the course of providing service is generally not subjected to service tax. The department may however not agree to this view.A decision here would have to be taken on the basis of a review of the agreement entered into between contracting parties in order to see whether the provisions of Section 67(1)(ii) can be invoked i.e. pertaining to consideration not being wholly or partly in money. Here, the obligation of the service receiver towards the service provider for the services involved would have to be quantified before one can arrive at a final conclusion. Where the service receiver is obligated to pay certain sum and pays it partly through materials, the same could come under the purview of section 67(1)(ii) and the service provider would be better off

including the value of such materials provided by the service receiver in the gross amount for charging service tax, to be on the safer side of law.

Are there any other specific inclusions and exclusions with regard to amount charged for specific services?

Rule 6 provides for certain specific inclusions as well as exclusions with regard to the amount charged for the services. These are given below –

Inclusions in amount charged for service:

1. Commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock broker to any sub-broker
2. Adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit
3. Amount of premium charged by the insurer from the policy holder
4. Commission received by the air travel agent from the airline
5. Commission, fee or any other sum received by an actuary or intermediary or insurance intermediary or insurance agent from the insurer
6. Re-imbursement received by the authorised service station from the manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer
7. Commission or any amount received by the rail travel agent from the railways or the *customer
8. Remuneration or commission by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner
9. Commission, fee or any other sum by whatever name called paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent
10. Amount received for the use of the services beyond the period originally contracted or the amount realized as demurrage charges or whatever the name you like eg; use of the containers beyond the normal period

Exclusions with regard to the amount charged:-

1. Initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit
2. Airfare collected by air travel agent in respect of service provided by him
3. Rail fare collected by rail travel agent in respect of service provided by him

4. Interest charged by the service provider for delayed payment of service consideration to him. Or interest on delayed payment of sale consideration to seller of the goods or property.
5. Taxes levied by any government on any passenger travelling by air would also be excluded while providing service of transportation of passengers by air. However, this is subject to the condition that such taxes are shown separately on the ticket or the invoice for such ticket issued to the passenger.
6. Accidental damages not relatable to provision of the service due to unforeseen actions
7. Subsidies and Grants received by service provider from the Government which are not relatable to the provision of service.

Where during the course of providing service, there is transfer of property in goods, what would be the value?

Where there is transfer of property in goods from the service provider to the service receiver, the service provider would be entitled to a deduction from the gross value to the extent of the value of the goods and materials sold as aforesaid. In other words the service tax is chargeable on the value charged towards labour alone. Where in the invoice the value subjected to VAT is clear, that value can be adopted. Where it is not clear in the invoice the value in the VAT returns can be an indicator. Where no such evidence is available, the actual cost of the goods used for the provision of the service would have to be arrived at and then the gross profit margin added up to arrive at the value of goods sold. This would be in line with the decision in the case of Gannon & Dunkerley ((1958) (9) STC 353 (SC). Obviously the first option is advisable.

Value of service portion in the execution of works contract

Valuation for works contract for charging service tax would be as per Rule 2A of Service Tax(Determination of Value) Rules, 2006 as amended by Notification No. 24/2012 - Service Tax dated 6th June, 2012. Following options have been stipulated under the Rules for determination of valuation for charging service tax.

a. Total amount minus value of transfer of property in goods transferred in the execution of works contract: As per this option, determination will be as per following formula: Total amount – value of property in goods transferred in execution of works contract.

Explanation. - For the purposes of this clause,-

i. gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

ii. value of works contract service shall include, -

- labour charges for execution of the works;
- amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- cost of consumables such as water, electricity, fuel used in the execution of the works contract;
- cost of establishment of the contractor relatable to supply of labour and services;
- other similar expenses relatable to supply of labour and services; and
- profit earned by the service provider relatable to supply of labour and services;

iii. Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

Where the value has not been determined under above method, the person liable to pay tax on the service portion involved in the execution of the works contract shall be determine the service tax payable in the following manner.

1. In the case of original works the value of the service portion in the execution of the works shall be 40% of the value of the total amount charged.
2. In the case of the works contract relating to movable properties the value of the service portion in the execution of the works contract shall be 70% of the value of the total amount charged.
3. In the case of other works contract other than those covered under the above (1) and (2) including the maintenance, repair, completion and finishing services of immovable properties, the value of service portion in the execution of the works contract shall be 60% of the total amount charged.

Original Contract means

a. All new constructions
b. All the types of additions
c. Alterations to damaged or abandoned structures on land that are required to make them workable
d. Erection, Commissioning and installation of the plant and machinery or equipment or structures, whether pre fabricated or not

   Total amount means

   A. Sum total of the gross amount charged for the works contract
   B. Fair market value of goods and services supplied by the service receiver in or in relation to execution of the works contract after deducting the amount charged by the service receiver from the service provider and VAT or sales tax levied there on.

Fair market value of goods and services shall be determined in accordance with the generally accepted accounting principles.

The persons who are claiming the deduction towards value of materials from the total amount charged or who are paying the service tax on 40%, 60% or 70% of the total amount as the case may be shall not be eligible to take the benefit of cenvat credit on inputs used during the course of construction service.

Determination of value of the service in relation to money changing

If the currency is exchanged from Indian currency or to Indian rupee the value of the taxable service shall be equal to the difference between the buying rate or selling rate, as the case may be

and RBI reference rate for the currency multiplied by total units of units of currency. For this purpose rate notified by the RBI on the date of money changing should be taken in to the consideration.

For example if the customer is selling $10000/- at Rs.50/-, on that date rate notified by the RBI as selling rate of $is Rs. 55/- the value of the taxable service shall be 10000*(55-50) =Rs. 50000/-

If the data relating to the corresponding RBI reference rate is not available on the date of money changing the value of the taxable service shall be 1% of the value of the gross amount of received or paid in Indian Rupees.

Taxable value of money changing when both the currencies are foreign currency: the value of the taxable service shall be 1% of the lesser of the two amounts the person changing the money would have received by converting one of the currencies in to Indian currency on that date reference date notified by the RBI.

Determination of service portion involved in supply of food in a restaurant or as outdoor catering:

Description of service	Value of the service
The value of the service portion in an activity of supply of food or any other article of human consumption or any drink is supplied as part of the activity at a restaurant	40% of the total amount charged
The value of the service portion in an activity of outdoor catering where in the goods being the food or any article of human consumption or drink is supplied	60% of the total amount charged

Total amount means the sum total of gross amount charged and fair market value of all the goods and services supplied by the service receiver in or in relation to supply of food and deducting the amount charged by the service receiver and VAT or Sales tax if any levied. Fair market value shall be determined in accordance with the generally accepted accounting principles.

Cenvat credit on input services and capital goods shall be available however the excise duty paid on inputs pertaining to the chapter 1-22 of CETA 1985 shall not be available for the payment of service tax on output activity.

Pointers for practice

1. The professional would have to go through the relevant agreements the assessee has with his customers to know the exact amounts being charged towards taxable services and others and the break ups for the same.
2. The professional should be careful enough to ascertain whether the amounts charged are inclusive of all taxes or are the taxes extra. Where the amounts are including taxes and represents amounts charged towards material as well as labour, the gross amount has to be split up in terms of the amounts charged for material and the amounts charged for service. The taxes (VAT on material and service tax on labour portion) can then be calculated using the same inclusive philosophy discussed earlier.
3. In case of separate collection of expenditure or costs whether the pure agent conditions under Rule 5 (2) are satisfied.

IMPORT AND EXPORT OF SERVICES

The amendments to the provisions w.e.f. 1.7.2012 included the withdrawal of the Rules relating to Import and Export. It is presumed that the place of provision of the services rules would take care of all the issues smoothly. However there are gaps in the provisions wherein the question of whether the export of services are to suffer Nil duty itself is being questioned. Also the vires of the present law to tax services on reverse charge or categorizing as export has also seen some doubts being raised.

Understanding that the intention of the Government is to tax the services under reverse charge and to keep export of services free of tax impact, we discuss further.

Import of Services

The services received from outside the taxable territory are liable to payment of service tax by the recipient from 2006. Earlier it was based on criterion of location of immovable property [for around 12 services related to real estate] , place of performance [around 40 + where physical presence may have been necessary] and rest based on the location of the recipient. The services which were liable were the taxable services, therefore all unspecified services or services which were liable at nil rate would not be covered. Also there was a dispute whether the payment for such services could be made by utilizing "cenvat credit" as the output service was being equated with the reverse charge. Tribunal had held that the credit could have been utilized but revenue view was different. The Karnataka High Court held that the credits could be utilized by service recipient to set off service tax liability on services received from outside India.

Now wef 1st July 2012, the place of provision of services rules read with Section 66F and Rule 6A of the Service Tax rules would be relevant.

To determine if the place of provision of service whether in the taxable territory or not, **please revert to the Place of Provision of Service Rules.**

PLACE OF PROVISION OF SERVICES RULES

What is Relevance of Place of Provision of Service?

With the introduction of new scheme of tax, the determination of tax is dependent upon whether the services are provided within the taxable territory or not. If it is provided within the taxable

territory, it would be taxable and if not in taxable territory not taxable. This would be the position irrespective where the service provider or service receivers are located.

Services being intangible it requires guidelines as to determination of the place providing service to ascertain taxability considering whether it is provided within taxable territory or not. For providing such guidelines Place of Provision of Services Rules, 2012 is notified.

Determining Location of service provider and location of service receiver

Before we go to indentify the place of provision of service, one has to first identify where the location of service provider and location of service receiver.

The location of a service provider or receiver (as the case may be) is to be determined by applying the following steps sequentially:

A. If the service provider/receiver has obtained only one registration, may be centralized (in case of multiple places) or otherwise (having only one place) - **the premises for which such registration is taken is the location**

B. In other cases i.e. either no registration is taken or multiple registration is taken the location of service provider/receiver is identified sequentially as follows:

    a. If services are provided from Business Establishment (place where management and control exist) – **Place of such business establishment is the location**

    b. If services are not so provided but from other establishment (fixed establishments) – **Place of such fixed establishment is the location**

    a. If the services are provided from / received by more than one locations - **the establishment most directly concerned with the provision of service / use of the service is the location**

    b. In the absence of any places mentioned above – **usual place of residence is the location**.

Determination of place of provision

The Place of Provision of Services has been structured by breaking up the services from Rule 4 to Rule 12 into sectors i.e. on following basis (separately explained later as to its scope):

a. Rule 4-Based on the performance of service
b. Rule 5-Based on location of immovable property
c. Rule 6-Based on place of holding event
d. Rule 7-Based on performance of services at more than one location

e. Rule 8-Based on the provision of service where provider and recipient both located in taxable territory
f. Rule 9-Based on specified services where place of provision is at location of service provider
g. Rule 10-Based on destination based transportation of goods services
h. Rule 11- passenger transportation service based on place where the passenger embarks on the conveyance for a continuous journey,
i. Rule 12- based on services provided on board conveyance in course of a passenger transport operation.

When none of these specific rules is applicable, then the place of provision is determined based on default Rule 3, according to which, **the place of provision of service would be based on location of recipient of service.** However, in the ordinary course of business, the location of service receiver is not available (say for example walk in customers where the location of service receiver is not known ordinarily), then the place of provision is the place of the service provider.

Power of Central Government to notify the place of provision

In addition to the above determination as mentioned above, Rule 13 empowers the Central Government to notify the type of services or circumstances in which cases the place of provision would be the place of effective use and enjoyment of a service. As on date the Central Government has not notified any type services in this regard.

Resolving conflict in case more than one rule covering the situation.

As per Rule 14, provides that where the place of provision of a service could be determined under more than one rule as it fits in there, it has to be determined according to the rule that occurs later among the rules that are equally meriting consideration.

For example based on the performance rule (Rule 4) the place of provision is say New-york, however by virtue of Rule 8 (which provides that if both provider and receiver are located in taxable territory the location of receiver of service to be taken) the place of provision is New Delhi, the place of provision would be New-delhi as Rule 8 occurs later amount Rule 8 and Rule 4.

What is Place of provision of service as per the specific rules?

Rule No.	Nature of Services	Determination of place of provision	Types of Services
4	Performance based service	Place of performance	i) services provided in respect of goods that are required to be made physically available by the service receiver to the service provider, in order to provide the service. • when such services are provided from a remote location by way of electronic means, the place of provision shall be the location where goods are situated at the time of provision of service. • This sub rule shall not apply in case service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re export ii) services provided entirely or predominantly, in the ordinary course of business, in the physical presence of an individual, represented either as the service receiver or a person acting on behalf of the receiver Example: Services like cosmetic or plastic surgery, beauty treatment services, personal security service, classroom teaching etc
5	Related to immovable property	Place where the immovable property is located or intended to be located	• The term Immovable Property has not been defined in the Act • Applies only to services which relate directly to specific sites of land or property. There needs to be very close link between the service and the immovable property **(Para 5.5.4 of Education Guide)** • Example: Services supplied in the course of construction, reconstruction alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work, renting of immovable property, services provided by

Rule No.	Nature of Services	Determination of place of provision	Types of Services
			experts and estate agents, provision of hotel accommodation or warehouse space, legal services dealing with applications for planning permission, services of an architect contracted to design the landscaping of a particular resort. • However, services provided by an interior decorator to design common décor for all its stores in India, repair and maintenance of machinery which is not permanently installed, advice or information relating to land prices or property markets, services of an agent who arranges finance for the purchase of property **would not be considered** as services which are land related • Following services are not land related: Repair and maintenance of machinery which is not permanently installed, Advice or information relating to land prices or property markets because they do not relate to specific sites, Services of an agent who arranges finance for the purchase of a property
6	Related to events	The place where the event is actually held	• Services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission **shall be the place where the event is held** • Provision of sound engineering for an artistic event which is a prerequisite for staging of that event would be considered as a service ancillary to its organization • Services of courier agency used for distribution of entry tickets for an

Rule No.	Nature of Services	Determination of place of provision	Types of Services
			event is not a service ancillary to its organization
7	Services provided at more than one location	The location in the taxable territory where the greatest portion of the service is provided	• Any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of service is provided. • If testing services in relation to client company equipments is being provided by Indian company vide contract at, various locations whereby 40% of such testing done at USA, 30% at UK, 20% at Australia and 10% at India, out of that 10%, 8% is held at Delhi and 2% held at Mumbai, then in terms of this rule for entire 100%, place of provision of service is at Delhi. (Being greatest proportion in India)
8	Service provider & receiver both are located in Taxable Territory	Location of service receiver	Any service other than listed in negative list or specifically excluded. • When seminar is organized in Japan, as long as service provider event management company and receiver firm are in India. Even thou by virtue of Rule 6, which specifically covers this scenario, the place of provision of service would be location of happening of event . As in terms of Rule 8, when Service provider and receiver both are located in a taxable territory, then location of service receiver is the place of provision. As in terms of Rule 14, if a situation is covered by more than one rule, latter of such rule shall prevail.

Rule No.	Nature of Services	Determination of place of provision	Types of Services
9	Specified services	Location of service provider	a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders; b) Telecommunication services provided to subscribers; c) Online information and database access or retrieval services; d) Intermediary services; (intermediary services in respect of goods not covered in this Rule) e) Service consisting of hiring of means of transport, up to a period of one month.
10	Goods transport services **other than by way of mail or courier**	Place of destination of goods	• The place of provision of services of transportation of goods shall be the place of destination of goods. • *Provided* place of provision of service of GTA shall be location of the person liable to pay tax • *If the goods are sent by air consignment from Singapore to Mumbai to Dubai, irrespective of place of start point, place of provision is always destination of goods. i.e. Dubai*
11	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey	*When it is journey with single ticket no stopover for a Delhi-London-New York-Delhi flight. New Delhi is place of provision of service.* .
12	Services provided on board a conveyance	The first scheduled point of departure of that conveyance for the journey	Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board. A video game or a movie on demand is provided as on board entertainment during Mumbai to Dubai leg of a Singapore - Mumbai –Dubai flight, The place of provision of this service will be Singapore (outside taxable territory and hence not liable to tax)

Pointers for practice

- The professional should be carefully go through the various agreements the client has with his customers to understand the terms and conditions as the status as to Place of Provision of Services Rules 2012. The earlier understanding under the Import or Export of services is no longer applicable [though could be indicative] and there are a few departures. The rules have to be examined one by one starting from last for determining applicability. If none of the rules from 4-12 applies to specific scenario on hand , then default Rule 3 would be applicable.
- The billing and sales correspondences can also indicate the real nature of the transaction. It has been observed that at times the explanation, billing as well as the agreement are surprisingly all different.
- The professional is also advised to exercise due care in cases where the performance based criterion applies in order to determine the status as to Import or Export of service as often the cost of non-compliance could be high.
- The criterion for specified service provider, specified service receiver is as relevant as the specified service for the attraction of the levy where received from a non resident.
- The professional should also ensure that the client claims the benefits associated with export of services mainly in the form of refunds, rebates etc.

DEMAND, APPEALS, RECOVERY AND PENALTIES

Demand &Adjudication:

The word "demand" as per Black's Law Dictionary means assertion of a legal right; an imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act.

Demand may arise when the assessee doesn't pay the tax/duty or short pays the tax/duty or avails the benefit of any notification prescribed under law without satisfying the conditions set out in the notification or avails ineligible credits. Section 73.

In such cases and other related statutory provisions relating to demand, interest under service tax are given in a table format for better understanding:

Section		**Statutory provisions**

Sec 73		Recovery of duties not levied or not paid or short levied or short paid within 18 months. This is the principal section for invoking all demands by the Department.
Proviso to Sec.73		Above said 18 months will be extended to 5 yrs. If there involves fraud, collusion, willful misstatement or suppression of fact **with intent to evade the payment of duty**.
Sub-section 73(1A)		The same charges when a follow – up demand is given for a period subsequent to the previous notice(s) on same grounds.
Section 73(1A)		Issue of only a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period on the same grounds. Such statement would be construed as service of notice.
Sec 73 (2)		Deals with determination of demand after issue of notice and assessee shall pay the amount so determined
Sec 73(4A)		In case of during audit or investigation or verification, it is found that there is short levy/ non levy/short paid/not paid service tax or erroneous refund but transaction are specified in the records, the service tax paid fully or partly, along with interest and penalty at 1% of such tax, for each month where default continues, upto 25% of tax amount before notice is issued and inform the CE officer in writing of same. After receipt of same, the notice would not be serviced u/s 73 (1) and such proceeding in respect of such amount shall be concluded. any additional amounts could be collected as determined is payable by the CE office
Sec 73(3)		No notice to be served when the service tax is paid before issuance of SCN in cases not involving fraud, collusion etc., this is not applicable for service tax become payable before 14.05.2003.
Sec 75		Every person who fails to credit the tax or any part to the Government shall pay simple interest at 18% pa (15% in case turnover is less than 60 Lakhs in the previous financial year.
Sec 78		Penalty in case of fraud, suppression, willful mis-statement etc.
Sec 73A		Service provider should have to pay the amounts so collected from the service receiver to the Central Government. This provision also applies in case where the service provider has collected the taxes in any manner from the service receiver.

Sub Sec 73A (3)		Central Excise Officer shall issue a notice, where any person collected the tax but not paid to the credit of CG.
Rule 14 CCR 2004		Cenvat Credit taken / utilised wrongly or erroneously refunded then the provisions of Section 73 & 75 will apply.

Normally, a proceeding starts with the issue of a show cause notice to the assessee and giving him an opportunity of representing his case. An ordinary notices and letter may also have been issued earlier but the proceeding is with the effect of issues of show cause notice

The Demand is completely governed by Sec 73 the provisions can be summarized in the following table:

Initiation of proceedings under Sec. 73	Whenever there is a short levy/short payment or non-levy or non-payment, proceedings can be undertaken.
Show cause Notice	It is mandatory for the Department to issue a show cause notice.
Time limit for serving show cause notice	a. Involving fraud, collusion, wilful mis-statement or suppression of facts or contravention of any provisions with an intent to evade payment of duty - 5 years from relevant date. b. In other cases – 18 months from relevant date. c. Where the service of notice is stayed by court order, the period of such stay would be excluded in computing this time limit.
Relevant date	Relevant date mean - a. In case of short levy/non-levy or short payment/non-payment the date on which the six monthly return is filed or required to be filed; If it is not filed, the date on which it was required to be filed. If the return is filed date on which return filed will be the relevant date. b. If there is no such time limit, the date of payment of duty. c. In cases of provisional assessment, the date of adjustment of duty after final assessment.

	d. In case of erroneous refund, the date of such refund.
Payment to drop proceedings	In case of during audit or investigation or verification, it is found that there is short levy/ non levy/short paid/not paid service tax or erroneous refund but transaction are in records, the assessee has option to pay 1% penalty subject to a maximum of 25%. Once an intimation is given, the notice need not be issued
Voluntary payment	In case the service provider pays the service tax and informs the department about such payment, no notice shall be served under this provision. Penalty also cannot be imposed.
Recording of assessee's representation	Sub-section 2 to 73 makes it mandatory for the officer to consider the representation of the assessee. The officer has to comply with the principles of natural justice.
Form of order	It is mandatory for the officer to pass a speaking order. Speaking order is one, which gives the reasons for the decision. A simple letter asking for payment of duty is not an order.
Payment on passing of the order	The service provider can either pay the tax determined or on the other hand has a right of further appeal, which grants him rights of obtaining stay of demanded amounts in appeal.

As per CBEC circular No 80/1/2005-ST, dated 10-08-2005, Show cause notice can be issued by different rank central excise officer with monetary limit for the purpose of section 73 are given below:

Central Excise Officer	Amount of ST or Cenvat specified in a notice for the purpose of adjudication
Superintendent of Central Excise	Not exceeding Rs.1 lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation)
Assistant/Deputy commissioner of CE	Not exceeding 5 Lakh
Joint Commissioner of CE	Above 5 Lakh but not exceeding Rs. 20 Lakh
Additional Commissioner of CE	Above Rs. 20 Lakh but not exceeding Rs 50 Lakh
Commissioner of CE	Without limit

Extended time limit for issuing the show cause notice in terms of proviso to Sec. 73

As there is a 2 different limitation periods for Demand it would be important to know when the longer period of limitation (5 years) is applicable in place of shorter period of 18 months. Proviso to Section 73 provides that if there is fraud, collusion, willful mis-statement, suppression of fact and with an intent to evading the payment of duty then the extended period of limitation will be applicable.

Payment of excess collection

Section 73A stets out that the amount has to be paid to the credit of the central government in the following cases:

- Person liable to pay service tax has collected service tax in excess assessed or determined and paid
- Person has collected the service tax which was not required to do so.

In case the amount is required to be paid by a person in the circumstances stated above but has not paid, then the Central Excise Office shall issue a show cause notice. After considering the representation made by such person shall determine the amount to be paid, this shall not exceed the amount stated in the notice.

Interest on amount collected in excess:

Section 73B set out payment of interest, in the case where the amount is payable as determined by the central excise officer. The interest shall be between the ranges of 10% upto maximum of 24%.p.a. The rate fixed now is 18% p.a. (earlier 13%) vide notification 15/2011-ST dated 1.03.2011

In case the assessee has provided taxable service not exceeding Rs 60 lakhs during any financial year covered under the notice or in the preceding financial year then the interest would be at the rate of 15%. This is by a proviso inserted to section 73B

The interest is payable only in case the amount is determined by the central excise officer. When the amount is paid voluntarily such interest is not applicable

Provisional attachment

Section 73C empowers central excise officer with previous approval of Commissioner of Central Excise by an order in writing may attach the property of a person on whom the proceedings under

section 73 or 73A is pending. This can be done to protect the interest of the revenue and the attachment shall be by an order in writing. The attachment shall lost only for the period of 6 months from the date of the order but the same may be extended by the commissioner of central excise for further period upto 2 years subject to recoding the reasons in writing.

Publication of certain information

Section 73D empowers the central government to publish the information relating to any proceedings under service tax of any assessee if it deems to be fit for the public interest. The central government shall not publish any information till the time period available for the appeal.

The central government may also publish the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be in case of a firm, company or other association of persons.

By virtue of powers given under this provisions service tax (publication of Names) Rules, 2008 is notified w.e.f.1.04.2008.in the said rules the procedures that is required to be followed for taking such action has been set out.

Rectification of Mistakes

An order can be amended by the Central Excise Officer within two years from the date of passing the same to correct a mistake apparent from the records. Under Section 74 where any matter has been considered and decided by way of appeal or revision relating to the order referred above, any other matter on the order can be rectified with the exception of the matter that has been so decided.

Where due to rectification under Section 74 any refund due to an assessee is reduced or increases his liability, then such assessee should be given a reasonable opportunity of being heard in the matter.

Revision

The Commissioner of Central Excise has been empowered to call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order for the purpose of satisfying himself as to the legality or propriety of any decision or order. After examination of the record if he finds any issue or point which may effect on the protection of interest of revenue, then he may by an order direct such authority or subordinate to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order specified by him,

Every order under Section 84 shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

Where the Commissioner of Central Excise order or direct the adjudicating authority to apply to the Commissioner of Central Excise (Appeals) for the determination of points arising out of the decision then the adjudicating authority in this behalf shall make an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of such order.

Appeals

The provisions related to appeals are governed by the Section 85 & 86 of the Finance Act 1994. The detailed discussion on the same is further carried out in the following manner.

Section 85: Appeals to Commissioner (Appeals)

Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to Commissioner of Central Excise may appeal to the first appellate authority Commissioner of Central Excise (Appeals). Opportunity to be heard is to be provided to the aggrieved party. The appeal should be filed along with a stay application to be relieved from the pre-deposit of the Duty determined under the order to be appealed in terms of Section 35F of Central Excise Act.

The appeal shall be filed within 2 months from the date of communication/ receipt of the decision. The commissioner may condone the delay for a further period of 1 month, further there is no power to condone the delay beyond the said period of one month after the initial period of 2 months.

The CBEC is come out with a Circular no. 967/01/ 2013 – CX dated 1.1.2013. CBEC had issued the first Central Excise Circular of the new year which is clarified for arrears recovery during pendency of Stay applications. The circular has rescinded seven previous circulars on the same subject.

According to this Circular, if a stay application is filed before the Commissioner (Appeals) and CESTAT and if there is no stay within 30 days, recovery action has to be initiated. In case of stay applications before High Courts and Supreme Court, even this 30 days time is not available. Recovery has to be initiated immediately after the orders if there is no stay.

This circular is not in line with the law. Further the Constitution Bench of the Hon Supreme Court in the case of CCE, Bolpur Vs Ratan Melting and Wire Industries – 2008 (231) ELT 22 (SC) has held that a circular which is contrary to the statutory provisions has really no existence in law.

In a recent judgement in 2013-TIOL-09-HC-AP-ST delivered a few days ago in, the AP High Court directed the Revenue not to initiate or pursue any coercive steps against the petitioner (or others who owe dues to the petitioner) under Section 87 of the Finance Act, 1994 or any other appropriate provision, till disposal of the petitioner's applications for condonation of delay and for grant of interim relief in the appeal preferred by the petitioner to the Tribunal on 26-9-2012. This stay is applicable only for that case. In experience of paper writer, a similar application may have to be made by others also to obtain stay.

Section 86: Appeal to Appellate Tribunal

Any person aggrieved by an order passed by a Commissioner of Central Excise under Section 73 or 83A or an order passed by the Commissioner of Central Excise (Appeals) under Section 85, may appeal to the Appellate Tribunal against such order. The appeal is also known as 'Second Appeal'.

The committee of chief commissioners of central excise or commissioners of central excise is not satisfied by the order passed by the commissioner of central excise or commissioner of central excise (Appeals) respectively may direct the central excise to go for an appeal.

The appeal shall be filed within three/four months (as the case may be) of the date of receipt of the order, either assessee or the commissioner of central excise shall be having 45 days from the receipt of the notice for filing cross objection memorandum. .

Fees for appeal to Tribunal

The prescribed fee is as under and to be paid through demand draft/pay order in favour of Assistant Registrar, CESTAT, New Delhi:

Total of Service tax, Interest and penalty (Rs.)	**Fee (Rs.)**
Less than 5,00,000/-	1000/-
5,00,001/- to 50,00,000/-	5000/-
More than 50,00,000/-	10,000/-

The fee for the stay application or rectification or restoration shall be Rs. 500/-

No such fee shall be paid by the central excise officer for the appeal and in case of Cross objection memorandum.

Where the matter involves only the question of facts and nothing of law the order passed by the Tribunal will be final and it cannot be taken further.

Appeal to High Court:

The appeal can be made against the order of the Appellate Tribunal when it involves a substantial question of law. Whether it involves a substantial question of law or not is something to be decided by the high court. The appeal is to be made within 180 days from the receipt of the order sought to be appealed u/s 35G of CEA, 1944 as amended by time to time.

Appeal to Supreme Court:

As per section 35L of CEA 1944 an appeal would be lie to the Supreme Court from:

- Any judgment of the high court on appeal as mentioned above ; or
- On a reference made by the appellate tribunal before 1.07.2003; or
- On reference made under section 35H for orders passed by tribunal before 01.07.2003.

The order of the Tribunal will have to go to High court generally however if the matter involves rate of tax or valuation the case can be taken directly to the Supreme Court.

Where there is an order of demand for tax and penalty on which the appeal is preferred it is a pre condition that the duty and penalty to be deposited. However the appellate authority may dispense which such pre-deposit of the duty demanded or penalty levied on the reason that those pre-deposit would cause undue hardship to such person.

Summary of Appeal provisions

The law relating to appeal can be summarized in the form of following table.

Order passed by	**Appeal lies to**	**Form to be used**	**Section reference**
1. Assistant/Deputy/ Additional Commissioner, and assessing officer	Commissioner (Appeals) Within 3 months of receipt of order	ST-4	Sec. 85
2.Commissioner/ Commissioner	Appellate Tribunal	ST-5	Sec. 86

(Appeals)	(within 3 months of receipt of order)		
3. Memorandum of Cross Objections	Appellate Tribunal(45 days from the date of communication of appeal)	ST-6	Sec 86

Who can represent the Service Provider?

A counsel could be a person who is knowledgeable in the law of Central Excise as the requirement of specialized knowledge is of importance under this law. If representation services are envisaged, the counsel should in addition be a Chartered Accountant, a Cost Accountant, a Company Secretary, a post graduate or honours degree holder in Commerce, an advocate, or post graduate degree or diploma holder in Business administration or a retired employee of the Department of Central Excise or Customs after rendering not less than 10 years service.

Recovery of amount

As per Section 87 where any amount payable by a person to the credit of Central Government under any of the provisions of this chapter or of the rules is not paid, the central excise office shall proceed to recover the amount by in the following manner:

1. The Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs;
2. The Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
3. Every person to whom a notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit

receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

4. In a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow;
5. Central Excise Officer may, on an authorisation by the Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to besold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;
6. The Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue

Such amounts paid shall be considered for adjustment at the time of finalization of the assessment. In case of any surplus after such adjustment it shall be credited to consumer welfare fund or the person having the incidence can make a refund application under section 11 B of Central Excise Act.

In case amount so collected is not deposited by within the period of 6 months to the credit of the central government then the offense would attract prosecution for the period of 1 year or 3 years as case may be.

Interest on amount collected in excess:

Section 73B set out payment of interest, in the case where the amount is payable as determined by the central excise officer. The interest shall be between the ranges of 10% upto maximum of 24%.p.a. The rate fixed now is 18% p.a. (earlier 13%) vide notification 15/2011-ST dated 01.03.2011

In case the assessee has provided taxable service not exceeding Rs 60 lakhs during any financial year covered under the notice or in the preceding financial year then the interest would be at the rate of 15%.this is an exception to section 73B

The interest is payable only in case the amount is determined by the central excise officer. When the amount is paid voluntarily such interest is not applicable

Penalties

Penalties leviable under service tax provisions are given below:

Section 76 – Failure to make payment of service tax within due date:

Penalty which shall not be less than Rs.100 per day or 1% of the tax per month whichever is higher from the first day after the due date till the date of actual payment of Service Tax subject to maximum of 50% of tax amount that assessee has failed to pay.

Section 77: General Penalty

Section	Default and quantum of penalty for the same
77(1)(a)	**Fails to take registration according to Section 69** **Penalty will be highest of the following** • **Amount up to Rs.10,000/-** •
77(1)(b)	**Failure to keep, maintain or retain books of accounts and other documents** **Penalty may extend upto Rs.10,000/-**
77(1)(c)	**Failure to furnish information, produce documents or appear before the Central Excise Officer. Penalty will be highest of the following:** • **Amount up to Rs.10,000/-** • **Rs.200/- per day for each day of default**
77(1)(d)	**Fails to pay tax electronically, through internet banking** **Penalty may extend upto Rs.10,000/-**
77(1)(e)	**Issuance an invoice with incorrect or incomplete details or fails to account an invoice in the books of accounts** **Penalty may extend upto Rs.10,000/-**
71(2)	**Contravention of any provisions of this chapter or any rules made thereunder** **Penalty may extend upto Rs.10,000/-**

Section 78 – Penalty for Suppressing etc.,

Where any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this chapter or of the rules made thereunder with the intention to evade payment of service tax. Penalty will be as under:

- Penalty will be 100% of the amount of service tax not levied or paid or short levied or short paid or erroneously refunded.
- The above said penalty will be reduced to 50%, if the assessee has recorded the true and complete details of the transaction.
- The above said penalty will be reduced to 25% if the tax dues are paid within a period of 30 days (90days in case of Small Scale Sector Assessee[value of taxable services not exceed RS 60 Lakhs for any of years covered by notice or during preceding financial year) together with interest and reduced penalty form the date of communication of concerned order.

Section 78A:

Where a company commits following contraventions-

a. Evasion of tax or
b. Issues invoice without providing taxable service or
c. Avails and utilizes credits of taxes or duties without actual receipt of taxable service or excisable goods or
d. Fails to pay amount collected as service tax to credit of Central Government within 6 months of date when it becomes due

Then director, manager, secretary or other officer who at the time of such contravention was in charge and responsible to company was knowingly concerned with contravention liable to penalty extending upto Rs 1 Lakhs.

Section 79 – penalty for failure to comply with notice – **Omitted**

Section 80 – Penalty not to be imposed in certain cases

Section	**Penalty not to be imposed if….**
80(1)	Penalty under Section 76, 77 or first proviso to sub-section (1) of Section 78 are leviable if the assessee proves that there was reasonable cause for the default

80(2)	Penalty u/s 76,77 and 78 shall not be levied if the service tax payable as on 6th day of March 2012 in relation to renting of immovable property along with interest is paid in full within six months from the 28.05.2012 i.e., by 28.11.2012

Penalty for late filing of returns (i.e., ST-3) prescribed under Rule 7 of Service Tax Rules:

Where an assessee submits the returns after the date prescribed for submission of such return, the assessee is liable to pay the penalty under Rule 7C, for the period of delay –

Period of delay	Amount of Penalty
15 days from the date prescribed or due date	Rs.500/-
Beyond 15 days but not later than 30 days for the due date	Rs.1000/-
Beyond 30 days from the due date	Rs.1000/- Plus Rs.100/- for every day from the 31st day till the date of furnishing the return but maximum of Rs.20,000/- as prescribed in Section 70.

Penalty for failure of filing NIL returns

Even if there is no business during the period, the assessees have to file 'NIL' return as long as registration certificate is valid.

Filing of return by the assessee within the prescribed time limit is compulsory; even it may be a nil return, penal action may be attracted on the such failure.

As per the proviso to Rule 7C if there is a sufficient reason for not filing the returns and if the service tax payable is nil, the Central Excise Officer may reduce or waive the penalty.

Penalty under Cenvat Credit Rules, 2004

As per Rule 15 of the CCR, 2004, penalty is leviable as given below in the table:

Rule under CCR	Default and penalty for such default
15(1)	If assessee avails or utilize cenvat credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions then penalty will be leviable for the same. Higher of the following will be imposed as penalty. • Not exceeding the duty or service tax on such goods or

	services or • Rs.2,000/- whichever is higher
15(3)	In case, where the cenvat credit in respect of input or capital goods or input services has been availed or utilized wrongly by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions with intent to evade payment of service tax. Then an assessee shall be liable to pay penalty in terms of provisions of Section 78 of the Finance Act
15A	General Penalty: contravention of provisions of CCR 2004 for which no penalty has been provided in any rule then penalty may extend to Rs.5000/-

THE VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME:

a) The Finance Act was enacted on 10th May, 2013. Some of the major changes brought about in Finance Act, including the 'Service Tax Voluntary Compliance Encouragement Scheme' would be effective from the date the Presidential Assent is given.

b) As a measure of increasing the government revenue and reducing the litigation, the Government has introduced a one-time scheme called 'Voluntary Compliance Encouragement Scheme' under which, a defaulter may pay his taxes which he has failed to pay without any interest or penalty.

c) As per Sec 95(1)(b) of the Finance Bill, 2013, 'declarant' means any person who makes a declaration under sub-section (1) of Sec 97 of the Finance Bill, 2013. The Sec 97(1) provides that subject to the provisions of the scheme, a person may make declaration to the designated authority on or before the 31st day of December, 2013 in such format and is such manner as may be prescribed.

d) As per the provision of the scheme, it is understood that a person on whom no notice or order of determination of taxes have been issued or made before 01.03.2013, can apply for relief under the provisions of this scheme. It is also pertinent to note that a person who has disclosed his liability in the service tax return, but have failed to pay the taxes, shall not have an option to avail the benefit under this scheme.

e)The persons making application under the this scheme, and on whom inquiry or investigation has been initiated for non-payment or short payment of service tax, the application of such persons under this scheme, maybe liable for rejection by the designated authority for reasons to be recorded in writing. For the purposes of this clause, in term investigation or inquiry means a search, issuance of summons, requiring production of books, documents or any other evidences, or if an audit has been initiated and such inquiry, investigation and audit is pending as on 01.03.2013. The scheme details are in annexure 2. Notification no.10/2013-ST provides details in this regard.

f) The assesses who wishes to pay taxes for past period [upto December 12] and not registered can get registered now and opt for this scheme. It has been provided in VCES that, beside interest and penalty, immunity would also be available from any other proceeding under the Finance Act, 1994 and Rules made thereunder.

Features of VCES:

1. The scheme has been introduced to incentivise the defaulting persons to voluntarily declare tax dues for the period October 1 2007 to December 31 2011.
2. The declaration cannot be filed in relation to following service tax dues-
    a. Dues in relation to which a notice or order of tax determination has been passed before 1st March 2013 under Section 72 , Section 73 or section 73A of the Chapter V of finance Act.
    b. Dues in relation to periods for which declarant has furnished returns and disclosed true liability but has not actually paid the disclosed amount of tax or any part thereof.
    c. Dues in relation to any issue in respect of which a notice or order of determination has been issued for any prior period.
3. Further in following instances the designated authority shall for reasons to be recorded in writing reject the declaration in relation to any tax due:

a. Where an enquiry or investigation has been initiated in relation to such dues by way of search of premises, issuance of summons or accounts, documents and other evidence has been requisitioned in relation to such enquiry or investigation or

b. Where an audit has been initiated
and such enquiry, investigation or audit is pending as on 1st March 2013.

4. Upon receipt of the declaration filed by declarant it is incumbent upon the designated authority to acknowledge the declaration within 7 working days from date of receipt of declaration.
5. Upon such acknowledgement, the declarant is required to pay the tax dues on a staggered basis with atleast 50% of dues being paid before 31st December 2013 and remaining in 2014.
6. The declaration would be conclusive after issuance of acknowledgement and once concluded matter would not be reopened in any proceeding under Chapter V before any authority or court relating to period covered by such declaration.
7. Where however Commissioner has reasons to believe that the declaration made by declarant is substantially false he may for reasons to be recorded in writing, issue a notice to the declarant and such proceedings would be deemed to be a notice issued under Section 73 or Section 73A of the Act.

Mechanics for opting for same;

d. Every person who intends to make a declaration under this scheme is required to obtain registration if not already registered.
e. An eligible person intending to opt for the Scheme is required to voluntarily make a declaration before designated authority before 31st December 2013 in Form VCES 1.
f. The declarant shall pay the amount as declared in scheme in 2 installments-
   i. Not less than 50% of tax dues by 31st December 2013 and
   ii.Remaining tax dues by June 30th 2014.
g. If declarant fails to pay the second instalment the same shall be paid by December 31st 2014 along with interest calculated from 1st July 2014.
h. The tax dues declared under this scheme cannot be discharged by utilising Cenvat credits.

REFUNDS AND REBATES

Introduction:

Similar to any other tax statutes even under Service tax law there is refund mechanism. We should also note that there are certain provisions under Central Excise which are made applicable for Service tax also. One of such provision is Section 11B of the Central Excise dealing with refunds. The same section will apply with regard to the refunds under Service Tax. Except for the cases where the self adjustment of tax is allowed, if any amount paid in excess by the assessee to the department, assessee needs to opt for making an application for refund. The below mentioned provisions of Central Excise has made applicable for service tax in case of refund and same is prescribed under Section 83 of the Finance Act.

1. Section 11B – Claim for refund of excise duty
2. Section 11BB – Interest on delayed refund beyond 3 months

Refund under Section 11B of Central Excise Act, 1944:

Brief explanation of Section 11B is as follows;

1. The person claiming the refund of any duty of excise may make an application to ACCE or DCCE before the Expiry of one year from the relevant date in the prescribed manner. However limitation period of one year shall not apply where any duty has been paid under protest.
2. The application for refund should be made in Form R (in triplicate).
3. The limitation period of one year is to be calculated from the date of payment of service tax.
4. The application should be accompanied by such documentary or other evidence Ensure that
    a. Grounds on which refund is claimed.
    b. Documents in support of refund claim should be enclosed. The documents should establish that the amount of duty claimed as refund has been paid by him and the incidence of duty has not been passed on by him to any other person.
    c. Amount of service tax relating to which such refund is claimed was either collected from him or has been paid by him.
    d. Details of the manner in which the amount of duty originally paid must be given.

5. The Assistant Commissioner, on being satisfied that due is refundable, shall grant refund only in the following cases:
    - Rebate of duty paid on excisable goods exported out of india or on excisable materials used in manufacture of goods which are exported out of india.
    - Refund of balance amount in PLA of applicant's account current maintained with commissioner of Central Excise (PLA).
    - Refund of credit of duty paid on excisable goods used as inputs in accordance with rules and act.
    - The duty of Excise paid by the manufacturer if he had not passed on incidence of such duty to any other person.
    - The duty of Excise paid by the buyer if he had not passed on incidence of such duty to any other person.
    - The duty of excise borne by any other such class of applicants as Central Government may by notification in the official Gazette.
6. In other cases, the AC shall make an order that the whole or any part of the duty is refundable including service tax collected and not remitted and the amount so determined shall be credited to the "consumer welfare fund" established under Section 12C.
7. No Refund shall be granted contrary to that contained in any judgment, decree,order or direction of appellate tribunal.

Refund of Cenvat Credit under Rule 5 of CCR 2004.

The refund Rule 5 is simplified by vide Notification No 18/2012-CE dated 17.03.2012 read with Notification No 27/2012-CE dated 18.06.2012 wherein the duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover subject to procedure, safeguards, conditions and limitations as may be specified by notification in the official gazette:

$$\text{Refund amount} = \frac{(\text{Export Turnover of goods} + \text{Export turnover of services}) \times \text{Net Cenvat Credit}}{\text{Total Turnover}}$$

Refund of cenvat credit under rule 5 shall be subjected to the conditions and procedures laid down in Notification No 27/2012-CE:

(a) Every manufacturer or provider of output service shall submit not more than one refund claim on quarterly. However, where a person exporting goods and services simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.

(b) For the purpose of this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1stOctober and fourth quarter from 1st January of every year.

(c) In respect of goods exported-

- the value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.
- Total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.

(d) In respect of Services exported-

- For the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.
- For the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.

(e) the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.

(f) the amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.

(g) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.

Procedure for filing the refund claim

a) The manufacturer or provider of output service, as the case may be, shall submit an application in Form A to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, in whose jurisdiction,-
    i) The factory from which the final products are exported is situated.
    ii) The registered premises of the provider of service from which output services are exported is situated.

b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944).

c) Application shall be certified/signed by
    (i) The individual or the proprietor in the case of proprietary firm or karta in case of Hindu Undivided Family as the case may be;
    (ii) Any partner in case of a partnership firm;
    (iii) A person authorized by the Board of Directors in case of a limited company;
    (iv) In other cases, a person authorized to sign the refund application by the entity.

d) The applicant shall file the refund claim along with the copies of bank realization certificate in respect of the services exported.

e) The refund claim shall be accompanied by a certificate in Form A-I, duly signed by the auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services.

f) The Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim.

g) At the time of sanctioning the refund claim the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported and allow the claim of exporter of goods or services in full or part as the case may be.

Provided further no refund of credit will be allowed if the manufacturer or service provider avails drawback allowed under the Customs and Central Excise Duties and Service tax Drawback Rules

1995 or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty or claims rebate of service tax under the Service Tax Rules 1994 in respect of such tax.

The new scheme w.e.f. 1st April 2012 does not require the correlation between exports and input services used in such exports.

Procedure for refund of credits u/r 5 of CCR 2004 prior to the 01.04.2012

- The claims are to be made once in a quarter in the calendar year (unless the assessee is an 100% EOU or exports in preceding quarter exceeded 50% of total value, when it can be made monthly)
- The service provider shall submit an application in Form A to the jurisdictional ACCE/DCCE within the time specified u/s 11B of CEA 1944
- The claim shall be accompanied by a copy of the invoice and a bank certificate certifying realization of export proceeds.
- The refund of unutilized input service credits would be as per the formula – (Total Cenvat Credit on input services during the period X (Export Turnover/Total Turnover))
- The service provider shall ensure proper follow up with the authorities till granting of refund.

Note: - The assessees are also advised to submit copies of cenvat registers plus documents on which credits are taken as these may practically be required. The proof as to payment of amounts to the service provider on these bills on which credits are taken, would also have to be furnished to facilitate quicker refunds.

Issues: Whether nexus of input services/inputs is required to be co-related with the export of taxable service?

Comments: Amendment was made in budget 2010 requiring the service provider availing the benefit under Rule 5 of Cenvat Credit Rules, 2004 to establish the nexus between the input service and output service. The amendment was made in the notification and not in the rule, which in our view is disputable. Further the CESTAT in various decisions has observed that one to one co-relation is not required.

Whether the time limit of one year is applicable to refunds of service tax paid in excess?

Readers may note that this has already been dealt with by the Tribunal/Courts. The Delhi Tribunal in Indian Ispat Works (P) Ltd Vs CCE Raipur (2006 (03) STR 161 (Tri-Del)) had held that where service tax was not payable, the department had no authority under law to collect the

same and therefore the time limit of one year for refund was not applicable. Thus this question is a valid one and the view can be taken by assessees.

Whether refund of accumulated credits possible?

In Idol textiles Ltd Vs CCE Thane (2007 (217) ELT 299 (Tri-Mum)), Rule 5 of Cenvat Credit Rules was held to be a beneficiary piece of legislation and refund of accumulated credit held to be available despite home consumption as it was a substantive right of the assessee. Therefore assessees having accumulated credits on account of exports (goods or taxable services) could go in for the refund option

The claim should normally be accompanied by full documentary proof regarding the payment of appropriate taxes on which the claim for refund is being filed. The refund can be denied where any of the required conditions are not satisfied. The refund would be granted once an order for the same is passed by the concerned authority. Where the order is against the assessee the same would have to be taken up on appeal with the Commissioner (Appeals).

Where the refund is not granted within three months from the date of application for the same or from the date of the order passed by Commissioner Appeals/Appellate Tribunal/Court, interest shall be payable as per section 11BB of Central Excise Act 1944 from the first day after the expiry of three month period and up to the date of refund at the rates notified which is currently at 6% p.a under Notification 67/2003 CE (NT) dated 12.09.2003

The service tax provisions provide an option for the provider of taxable service who exports his services in accordance with the Export of Service Rules 2005 to opt for refund of the cenvat credits in respect of excise duty paid on inputs and service tax paid on input services (under Rule 5 of CCR 2004) used for providing such taxable services which are exported. This would be useful where the service provider is not in a position to utilise the said credits towards his liability on services provided within the country. Apart from this there is also an option to go for rebates (the procedure for which is explained in this chapter). In the year 2007, the government also notified certain input services normally received by exporters of goods for the purpose of exemption. I.e the exporters of goods now have the option of going in for refund of the service tax paid on specified input services which they use for exporting their goods. In other words, the exemption from service tax is not given to the service provider who provides services to such exporters. The exporter would have to file a claim for refund of the service tax he has paid on his input services once the goods have been exported. The procedures are explained below –

Refund Under Notification No 41/2012-ST dated 29.06.2012 w.e.f 1.7.2012

The notification grants rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods. In the said notification standard rates of claiming rebate have been revised and the same is given in the annexure

Meaning of term "Specified Services" in respect of which rebate can be claimed:

i) in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;

ii) in the case of goods other than (i) above, taxable services used for the export of said goods;

- But shall not include any service mentioned in sub-clauses (A),(B),(BA) and (C) of clause (l) of rule (2) of the CENVAT Credit Rules, 2004; **(refer exclusion part of the input service definition)**
- Place of removal have the meaning assigned to it in section4 of the Central Excise Act, 1944.
- The rebate shall not be claimed by a unit or developer of a Special Economic Zone;
- The goods that are exported can either be excisable or non excisable
- The refund can be claimed either by manufacturer exporter or merchant exporter.
- The exporter may apply to the jurisdictional AC/DC of Central Excise
- The application form for claiming refund of service tax paid on specified services is provided in the notification itself.
- No CENVAT credit of service tax paid on the specified services used for export of said goods has been taken under the CENVAT Credit Rules, 2004;

Procedure for claiming Rebate

1. **For those exporters of goods who intend to claim rebate on the basis of rates specified in the Schedule of Rates**
   - **a)** manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with the customs;
   - **b)** exporter who is not so registered under the provisions referred to in clause (a), shall register his service tax code number and bank account number with the customs;

c) Procedure for obtaining ST coder No: service tax code number referred to in clause (b), shall be obtained by filing a declaration in Form A-2 to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that-

i) the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board(FOB) value of the said goods, on the basis of rate specified in the Schedule;

ii) no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services;

iii) conditions of the notification have been fulfilled;

e) Amount of rebate = FOB value of the goods of a class or description given in the Schedule X Standard Rate of Rebate

f) The amount of rebate calculated shall deposit in the bank account of the exporter

g) It is specified that the shipping bill or bill of export used for claiming rebate on Standard Rates will not be used for claiming Rebate on Actual basis.

h) where the rebate involved in a shipping bill or bill of export is less than rupees fifty, the same shall not be allowed;

2. For those Exporters of Goods who intend to claim Rebate on the basis of actual payment of service tax on specified services.

(a) rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;

(b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;

(c) The manufacturer Exporter, who is a central excise assessee, is required to file rebate claim in prescribed Form-1 having jurisdiction over his factory.

(d) An exporter other than a manufacturer-exporter as mentioned above is required to file a declaration in Form A-2 seeking allotment of Service Tax Code before

filing a rebate claim. The Form A-2 has to be filed to AC or DC of central excise having jurisdiction over his registered office or head office.

(e) After obtaining the Service Tax Code No the rebate claim has to be filed in Form A-1.

(f) the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.

(g) where the total amount of rebate sought under a claim is upto 0.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 shall be submitted along with relevant invoice, bill or challan, or any other document for each specified service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax paid thereon, certified in the manner specified in sub-clauses (A) and (B):

A. if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be self-certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

B. the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorised by the Board of Directors, to the effect that specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill number;

(h) where the total amount of rebate sought under a claim is more than 0.50% of the total FOB value of the goods exported, the procedure specified in clause (h) above shall stand modified to the extent that the certification prescribed thereon, in sub- clauses (A) and (B) shall be made by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961(43 of 1961), as the case may be;

(i) where the rebate involved in a claim is less than rupees five hundred, the same shall not be allowed;

(j) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself,-

i) that the service tax rebate claim filed in Form A-1 is complete in every respect;

ii) that duly certified documents have been submitted evidencing the payment of service tax on the specified services;

iii) that rebate has not been already received on the shipping bills or bills of export on the basis of procedure prescribed in paragraph 2;and

iv) that the rebate claimed is arithmetically accurate, refund the service tax paid on the specified service within a period of one month from the receipt of said claim:

Provided that where the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, has reason to believe that the claim, or the enclosed documents are not in order or that there is a reason to deny such rebate, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made thereunder;

Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made there under;

Refund under notification 17/2009-ST dated 07.07.2009 supersession by Notification No 52/2011 dated 30.12.2011– Available to exporters of goods in respect of specified input services (prior to 1.7.2012)

Conditions

- The specified services are indicated below in the note to this paragraph and readers may refer the concerned notifications indicated for the exact set of conditions to be fulfilled. Readers may also note that the services have not been specified from a single date and have been introduced over a period of time which has also been indicated below this paragraph.
- The exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified services used for export of the said goods;

- The exporter claiming the exemption should actually have paid the service tax on the specified services, to the service provider
- Exemption or refund of service tax paid on the specified services used for export of said goods shall not be claimed except under this notification.
- Where the exporter himself is liable to pay service tax under section 68(2) of the Act on the services which gets consumed on the goods that are being exported, the exporter is exempt from paying the service tax.

Note: - The services covered for the purpose of this notification are as follows –

1. General insurance service in relation to export goods – Sec. 65(105)(d)
2. Port services for export of said goods – Sec. 65(105)(zn)
3. Technical testing and analysis of said goods for export – Sec. 65(105)(zzh)
4. Inspection and certification of export goods – Sec. 65(105)(zzi)
5. Other port services for export of goods – Sec. 65(105)(zzl)
6. Transport of goods by road in a goods carriage from ICD to port of export – Sec. 65(105)(zzp)
7. Transport of goods in containers by rail from ICD to port of export - Sec. 65(105)(zzzp)
8. Cleaning services in relation to containers used for export of goods – Sec. 65(105)(zzzd)
9. Storage and warehousing services for export goods – Sec. 65(105)(zza)
10. Courier service in relation to transportation of goods and documents for export – Sec. 65(105)(f)
11. Customs house agent services in relation to export of goods – Sec. 65(105)(h)
12. Banking and other financial services like collection of export bills or export letters of credit – Sec. 65(105)(zm)
13. Foreign exchange broker's service in relation to sale or purchase of foreign currency – Sec. 65(105)(zzk)
14. Supply of tangible goods for use without transfer of control or right as to possession, in relation to export goods – Sec. 65(105)(zzzzj)
15. Clearing and forwarding agent's services in relation to export goods – Sec. 65(105)(j)
16. Payment of service tax paid on services commonly known as terminal handling charges - classified under any sub-clause of clause (105) of section 65

Readers are advised to go through the various notifications available on www.cbec.gov.in to study the conditions to be followed in order to claim the refund.

Attention of the readers is also drawn to Circular 106/09/2008 ST dated 11.12.08 which requires grating of adhoc refund of 80% of the claimed figure within 15 days of filing of claims on an interim basis in case of specified assessees which include those exporters (registered under Central Excise or Service Tax) who have paid duty of excise or service tax of Rs. 1 crore or more during preceding financial year as well as 100% EOUs. Assessees are also advised to go through Circular 112/06/09 ST dated 12.03.09 which clarifies certain specific issues pertaining to documentation and procedure.

Procedure for Claiming the Refund under notification 40/2012 ST dated 20.06.2012 which superseded the earlier notification 17/2011 dated 01.03.2011. this notification exempts the service tax on the services provided to SEZ or SEZ unit/developer. The exemption under the said notification can be claimed in two ways:

(a) Where the specified services received in SEZ and used for the authorized operations are wholly consumed within the SEZ, then the service provider need not charge/collect the service tax on such services provided. This is called ab initio exemption. For the purpose of this notification wholly consumed is determined as follows:

i) in respect of services specified in rule 4 of the POP Rules, the place where the services are actually performed is within the SEZ.

ii) in respect of services specified in rule 5 of the POP Rules, the place where the property is located or intended to be located is within the SEZ

iii) in respect of services other than those falling under clauses (i) and (ii), the recipient does not own or carry on any business other than the operations in SEZ

(b) In case where services are partly consumed in SEZ, the maximum refund shall be determined as follows:

$$\text{Refund amount} = (\text{export turnover of goods + services of SEZunit/developer}) \times \frac{\text{Service tax paid on services other than wholly consumed services (both SEZ \& DTA)}}{\text{Total turnover for the period.}}$$

For the purpose of above formula:

(A) Refund amount means the maximum refund that is admissible for the period

(B) "Export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported;

(C) **Export Turnover of services can be calculated in the following manner**

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

(D) Total Turnover means the sum total value of

i) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

ii) export turnover of services determined in terms of clause (C) and the value of all other services, during the relevant period

Other conditions & procedure for refund claim:

a) The SEZ unit/developer require to obtain a list of services that are liable to service tax as are required for authorized operations approved by the Approval Committee of the Concerned SEZ

b) For claiming ab initio exemption the SEZ unit/developer is required to furnish a declaration in Form A-1 verified by specified officer of SEZ, in addition to the list specified above.

c) For claiming refund the SEZ unit/developer file a declaration with AC/DC of Central Excise as the case may be having jurisdiction over SEZ or registered office as the case be in the Form A-2

d) The unit of SEZ is not registered shall, before claiming a refund under this notification, file a declaration with AC/DC of Central Excise, as the case may be having jurisdiction over the SEZ or registered office or the head office of the SEZ as the case may be in Form A-3.

e) The AC/DC after the verification allot a service tax code number to the SEZ within 7 days from the date of receipt of declaration in Form A-3.

f) The refund shall be accompanied by the following documents:

- a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, a copy of the declaration made in Form A-1

- invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of the said Act or rules made thereunder, in the name of the unit of a SEZ or developer, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original
- a declaration by SEZ unit/developer claiming such exemption to the effect (i) the specified services on which refund is claimed have been used for authorized operations in SEZ, (ii) proper account for the specified services received and used for the authorized operations are maintained by the SEZ unit/developer and the same shall be reproduced to the officer sanctioning the refund on demand, (iii) accounts or documents furnished by the SEZ unit/developer as proof of payment of service tax claimed as refund based on invoices or bill or as the case may be challan issued by the registered service provider indicating the service tax paid on such specified services are true and correct in all respects.

g) The AC/DC shall after due verification of the refund claim and after obtaining satisfaction as to the completeness of the claim shall refund the service tax paid on specified services.

How does the scheme of rebate work?

The rebate can be granted by the central government either on the service tax paid on taxable service exported or service tax paid on input services and/or duty paid on inputs used in providing such taxable service. This rebate shall be subject to conditions and limitations specified in the concerned notification dealing with the rebate.

Rebate of the service tax on taxable services exported

Notification 11/2005 ST dated 19.04.05 as amended grants rebate of service tax and cess (including SHE cess) paid on all taxable services (output services) exported in terms of rule 3 of Export of Services Rules 2005, to any country other than Nepal and Bhutan subject to conditions specified below –

- The taxable service has been exported in terms of rule 3 of the aforesaid rules
- The payment for export of such taxable service has been received in India in convertible foreign exchange
- The service tax and cess of which rebate has been claimed has been paid on the taxable service exported
- The rebate of service tax and cess is not less than rupees five hundred

Where the service tax and cess (including SHE cess) of which rebate has been claimed has not been paid or the taxable service has not been exported, the rebate allowed shall be recoverable with interest.

Procedure for the same -

- The claim for rebate shall be filed with the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise in Form ASTR 1
- The application shall be accompanied by a documentary evidence of receipt of payment against the taxable service exported and the payment of service tax and cess on such taxable service exported.
- There shall also be a declaration that the taxable service has been exported in terms of rule 3 of Export of Services Rules 2005 along with the documents evidencing the export of such taxable service.
- The jurisdictional ACCE/DCCE if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

Note: - The assessees are also advised to submit the details as to cenvat credits availed with the payments made to the service provider, to facilitate quicker rebate. For this, a cenvat register giving details of the credits availed plus details of the debits against the credits on export of taxable service would have to be maintained. This should be backed up with other documentary evidence in the form of invoices for export, bills for claiming credit, proof of payment to service provider, export realization, etc.

Whether a certificate from statutory auditor would be required to be furnished for claiming rebate of service tax under notification 11/2005?

The requirement of furnishing a certificate from statutory auditor would be required only in case the refund claim is filed in terms of notification 5/2006, wherein the refund claim was for more than Rs 5 lakhs, therefore rebate under notification 11/2005 would not require certificate from Chartered Accountant.

Whether co-relation between input services and output tax required under notification 11/2005?

Notification 11/2005 only requires the following conditions to be fulfilled.

- Service should have been exported
- Payment should have been received in foreign currency
- Service tax claimed as rebate should have been paid.

- Claim of rebate should be for more than Rs 500/-

From the above it is clear that notification 11/2005 does not require co-relation between input services with output tax. Further there are plethora of decisions have held that no statement of co-relation was required between input services and output tax.

Rebate of the service tax on input services or duty on inputs

Notification 12/2005 ST dated 19.04.05 grants rebate of the whole of duty paid on excisable inputs or whole of service tax and cess (including SHE cess) paid on all taxable input services used in providing taxable service exported in terms of rule 3 of Export of Services Rules 2005, to any country other than Nepal and Bhutan subject to conditions specified below –

- The taxable service has been exported in terms of rule 3 of Export of Service Rule 2005
- The payment for export has been received in India in convertible foreign exchange
- The duty, the rebate of which has been claimed, has been paid on the inputs
- The service tax and cess, the rebate of which has been claimed, have been paid on the input services
- The total amount of rebate of duty, service tax and cess admissible is not less than rupees five hundred
- Cenvat credit should not have been availed on inputs and input services on which rebate is claimed

Where the duty or the service tax, rebate of which has been claimed, have not been paid or the taxable service has not been exported or the cenvat credit has been availed on inputs and input services on which rebate has been claimed, the rebate shall be recoverable with interest.

Procedure for the same -

- The provider of taxable shall, *before the date of export of taxable service*, file a declaration with the jurisdictional ACCE/DCCE describing the taxable services to be exported.
- The declaration shall be accompanied by -
    1. A description, quantity, value, rate of duty and the amount of duty payable on the inputs actually required to be used in providing taxable service to be exported.
    2. In case of input services, the description, value and the amount of service tax and cess payable on input services actually required to be used in providing taxable services to be exported shall also be given.

- The ACCE/DCCE shall verify the correctness of the declaration and may accept the declaration on being satisfied as to the truth of its contents.
- The inputs shall be procured directly from a registered factory or from a registered dealer accompanied by valid invoices issued under Central Excise Rules 2002
- The input services shall be received along with an invoice, bill or a challan as per the provisions of Service Tax Rules 1994
- The claim for rebate of duty paid on inputs or service tax and cess paid on input services shall be filed with jurisdictional ACCE/DCCE in Form ASTR 2
- The application has to be accompanied by invoices issued under Central Excise Rules 2002 for procurement of inputs, invoices for input services as per Service Tax Rules 1994 , plus documentary proof for payment of duty on inputs and service tax on input services
- Proof of receipt of payment against service exported in convertible foreign exchange
- A declaration shall also be filed stating the service has actually been exported in terms of rule 3 of the Export of Service Rules 2005
- Proof of such export of service

Where the claim is in order, the jurisdictional ACCE/DCCE shall sanction the rebate either in whole or in part. Whether the time limit of one year applies in case of refund claim?

In case of Swagat Synthetics Ltd, the Hon HC of Guj, had held that refund under notification 5/2006 CE (NT), was refund of credit, whereas section 11B was with respect to time limit for application of refund of duty, as duty was different from input/input service credit. Therefore applicability of time limit of one year was not applicable to refund claims under notification 12/2005.

Whether time limit of one year was applicable from the date of raising invoice or date of realization?

For considering a service to be exported, the consideration should be received in foreign exchange, if the consideration was not received in foreign currency; the service would not be construed as exported. The service provider would be liable to pay the taxes. Therefore the service could be construed as exported only from the date of receipt of consideration, and not from date of raising invoice. Therefore in the opinion of the author the one year period should be

considered from the date of receipt of consideration and not from the date of raising service invoice. However with the introduction of Point of Taxation Rules 2011, the same needs to be factored, in order to determine the applicability of time limit of one year.

Whether obtaining registration under a correct service a pre-requisite for claiming refund of taxes?

Registration under a correct service is not a pre-requisite for claiming refund of service tax. As refund notification nowhere specifies requirement as to obtaining registration. Further registration under service tax was only for assesees who were liable to pay taxes, (sec 69). In case of export of services there was no requirement to pay taxes. Further this view was also upheld in case of Textech International (P) Ltd., Vs. CST 2011 (21) STR 289 (Tri), it is held that registration cannot be made as a basis to reject the refund claim when the entire services were exported

PROCEDURES WITH REGARD TO REGISTRATION

The provisions under service tax with regard to registration not only require the assessee to register himself when he starts providing a taxable service, but also to amend his certificate of registration every time there is a change in his business profile. He is also required to state at the time of registering as whether he wants to opt for centralized registration or not. This option can be exercised even at a later date in which case, he would have to get his Registration Certificate amended. Apart from a service provider, even a service receiver who is liable to pay service tax u/s 68(2) of Chapter V of Finance Act 1994 would be required to register himself under service tax for the purpose of paying service tax. The requirement as to registration would also extend to an Input Service Distributor who would want to distribute Cenvat credits on inputs, input services or capital goods to the unit providing taxable service or engaging in manufacturing of dutiable final products. The procedures with regard to registration under service tax in each of the scenarios would basically be the same with very minor changes which would be evident on the application for registration.

When does the service provider require registration under Service Tax?

A service provider whose value of service exceeds Rs 9 lakhs, in the year of providing the service or in any subsequent year, when the value of service cross Rs 9 lakh for the first time, would require registration , however such service provider can avail exemption if the value of service does not exceed Rs 10 Lakhs per annum.

What is the procedure for registration?

1. The assessee shall make an application in form ST 1 to the Superintendent of Central Excise in duplicate. Such application can be filed online www.aces.gov.in. For this the following procedure shall be adhered to :
    a. The user shall first log onto the site aces.gov.in and select “Service Tax” option on the left side of the screen
    b. He shall then register himself by clicking on “New users to click here to register with ACES” option. On clicking the same he will be required to give certain basic details and a e-mail id. The password for such registration will be sent to this mail id.

c. On submitting the form the password will be sent to the ID above and the user shall login into ACES with this password. Such a password is only to gain access to ACES and it does not imply that registration with the department is done.

d. In the case of an existing assessee, he shall fill in the "Declaration Form for ACES" (in Appendix I) and submit it to the respective commissionerate. The assessee will then receive a user ID and password at the mail ID specified in such form to activate his registration number in ACES. An existing assessee is NOT required to fill Form ST-1 again in ACES.

e. For a new assessee who does not have a service tax registration certificate, shall register with ACES with the ID and password that is sent as mentioned in 'c' above and select the option "REG" and "Fill ST-1".

f. The form shall be filed online with all the required details and submitted online itself.

g. A print of the form submitted online shall be taken and along with this the documents as mentioned in below shall be submitted to the department at the concerned Commissionerate within 15 days.

2. The application shall be filed within 30 days from the date of providing taxable service and shall bear the address sought to be registered

3. The application should be filled up carefully without errors and columns and boxes which are not applicable may contain "NA" stated across them. All the taxable services provided should be mentioned on the application and there would not be separate applications for each of such taxable services

4. The Form should be signed by the director/partner/sole proprietor as the case may be or the authorized signatory.

5. The application shall be accompanied by copies of the following documents -

- Self certified copy of PAN, (where allotment is pending, copy of the application for PAN may be given)
- Copy of MOA/AOA in case of Companies
- Copy of Board Resolution in case of Companies
- Copy of Lease deed/Rental agreement of the premises
- A brief technical write up on the services provided
- Registration certificate of Partnership firm
- Address proof of the assessee

- Copy of a valid Power of Attorney where the owner/MD/Managing Partner does not file the application

6. Once filed, the acknowledgement for having filed the application is to be obtained on the duplicate copy for one's own reference
7. If the Particulars stated in the Form are correct, then the registration certificate would be provided within a period of seven days. Where not so provided, the registration is deemed to have been granted.

How is centralized registration different?

Centralised registration is opted for in a case where the accounting and billing operations of the assessee are centralized in an administrative office which may be a branch or Head Office despite the services being provided from more than one location. The premises that is registered here is the one where the centralized accounting and billing is done. This decision is at the option of the tax payer and he can also opt to have multiple registration which however may not be advisable.

The procedure would be the same as explained above with a few exceptions -

- The registration in case of centralized registration would be granted by the Commissioner of Central Excise having jurisdiction over the centralized premises
- The registration formality at the department's end takes a little longer than the period stated above and the concept of deemed registration need not apply here

The following documents are required in addition to the documents needed under the aforesaid procedure -

a. Proof of address of each such premises or branches for which centralised registration is sought
b. Proof of address of branches, new offices opened if any

How to make amendments with regard to changes in particulars?

Amendment would be required where there is any change in the particulars furnished in the ST 1 at the time of registration.

- The changes shall be intimated to the department within 30 days of such change
- The fact that the ST 1 is being filed for an amendment, should be clearly highlighted on the form
- The assessee shall submit a certified copy of the Registration Certificate

- The application may also be accompanied by a covering note explaining the circumstances that led to the change with copies of relevant documents being given.
- Such amendment can be done online as well which will then have to be submitted to the department with the required documents.

Service Tax Registration Number

Service tax registration no is also called as Service Tax code, which is a fifteen digit PAN based code, wherein the first 10 digits are the same as PAN, next 2 digits are ST, and the last 3 digits are the serial numbers indicating the number of registration.

Premise code

It is a number for easy identification of location of registration of tax payer, premises code is given on the basis of Commissionerate, division, range.

PROCEDURE WITH REGARD TO INVOICING

The invoicing procedure with regard to service tax is something that is not assigned adequate importance by certain service providers. As far as possible where the records of the assessee are fully computerized, invoices may be generated from the system. Many of the accounting packages available in the country support invoicing and the invoicing option under these softwares are required to be opted. But in quite a few cases, it has been found that though the records of the assessees are computerized, the invoicing is manual raised or raised through independent software package, which do not speak to each other. At times, the choice of invoicing method / formats maybe at the behest of the customers.

How to raise a proper invoice?

The assessee can follow the below mentioned guidelines for the purpose of ensuring a proper invoicing methodology. The invoicing requirement is governed by Rule 4A of Service Tax Rules 1994.

A. The invoice is to be issued within 30 days of completion of taxable service or receipt of amount whichever is earlier.

B. In case of continuous supply of service, invoice was to be issued within 30 days of the date when each event specified in the contract which requires the service receiver to make any payment is completed .The invoice / bill / challan should be signed by such service provider or a person authorized by him.

- The invoice shall be serially numbered and should contain the following information
- The name, address and registration number of the service provider.
- The name and address of the service receiver
- Date of raising of invoice
- Details of the customer's/client's work order/purchase order
- Description, classification and value of taxable service provided.
- The amount of ST and Education cess/SHE Cess charged on such service tax
- Breakup of the amount charged towards the service / goods.
- Details as to exemption being claimed with reference to the concerned notification

Note: - The assessee is advised to indicate the values clearly where he claims deduction for value of goods or materials transferred during the course of providing the service. [If the service provider is following the benefit of notification 12/2003 ST, the material value is to be indicated clearly so as to avoid disputes with the department][the deduction under this notification is available upto 30.6.2012 only]. The service provider is also required to raise an invoice on receipt of advances towards the taxable services to be provided though very few assessees practically follow this requirement.

Illustrative format for the service invoice is given below –

Tax Invoice/Invoice U/r 4A of Service Tax Rules 1994 (Name and address of the service provider) ST Registration number	Invoice Number Date
(Name and address of the service receiver)	PO Ref Date
Particulars	*Amount in Rs*
Description of service provided	
Gross amount	
Exemption being claimed (details)	
Amount to be subjected to service tax	
Service tax at 12%	
Education cess	
Secondary and Higher Education cess	
Total service tax *(In words)*	
Total VAT/sales tax	
Others	
Total bill amount	

RECORD KEEPING

Record keeping under service tax is one of the most critical factors from the point of view of compliance. The assessee should have a sound record-keeping system if he is to avoid a scenario where he struggles at a later date to ensure compliance with the law. Considering the level and scale of computerization in India, it is shocking to note that the assessees who struggle the most with record keeping are those who have fully computerized system or even the ERP environment. Quite often assessees end up using customized software either developed in-house or sourced from abroad, which do not fully cater to the reporting requirements under service tax. Surprisingly the entire indirect tax compliance would be outside the ERP, which means that none of the checks and balances is within the system.

Assessees also struggle due to ignorance as to the provisions of law as well as to the reporting requirements thereunder. Until and unless the assessee himself is clear about the concepts of service tax and the reporting requirements thereunder, he would not be in a position to educate the systems analysts and the programmers to make changes to the software in order to ensure better reporting.

What are the records to be kept and whether there are any statutory records to be maintained?

There is no statutory record prescribed under service tax as far as record keeping is concerned. The assessee should follow the basic guidelines laid down here –

- A proper record should be kept of the materials received and used for the purpose of providing taxable services. The basic documents for this would be the Goods Received Notes and the Raw materials ledger in stores. Where the service provider has both taxable as well as exempted services, separate material accounts may be kept and Cenvat credits availed only on those materials used for providing taxable services. This can be done by segregating the material receipts at the GRN stage itself by having separate series for materials meant for use in taxable services. This should be followed up with proper physical control over stocks. Where stocks are transferred from one location to another, a system of having requisition slips can be followed in addition to stock transfer notes/invoices which would indicate the intended usage of the stocks so transferred.
- Next would be the task of identifying the input services to be used for providing services. To the extent possible, the services to be used for providing taxable services should be

identified so that full credits can be claimed on the same. Where segregation is not possible, the same would have to be flagged off for applying the formula laid down in Rule 6 of CCR 2004

- As far as input services are concerned, they may be assigned codes while accounting the same in the financial ledgers to identify them in terms of the intended usage. Another effective way of doing this is by documenting the reasons for procuring the service at the time of raising of the work order on vendors/service providers which would facilitate proper tracking of such input services at subsequent stages.
- Proper recording of Cenvat credits in respect of inputs and input services. The assessee here can maintain a Cenvat credit register which would give in detail the amounts of credits availed. The register can furnish the following details – Entry serial number, vendor name, item description and description of input service, basic value of goods/services, basic excise duty or service tax, cess on duty/tax, GRN reference for receipts, payment reference for having paid the service charges + service tax to the input service provider, total credits available, amount debited, invoice/bill for such debit, closing balance of credits. The assessee should also record the credit figures correctly in financial ledgers which can then facilitate a system of reconciliation between the Cenvat registers and the financial ledgers.
- The assessee should take due care in ascertaining and discharging service tax on cash basis, as corporate assessee are bound to maintain books of accounts on accrual basis, therefore the corporate assessee should ensure in accounting and discharging service tax on cash basis, which could be a tedious task.
- Care should be taken with regard to invoicing to ensure that proper breakups are given for the values so that the correct amount liable to service tax may be determined. For the purpose of filing of the ST 3 returns, detailed work sheets would have to be maintained clearly indicating the value of services billed, the amounts received towards such services billed, the amount of VAT/sales tax paid, the value of materials sold and the amounts charged towards labour so that the correct amount of service tax payable may be ascertained.
- In case the assessee opts for claiming deduction towards value of material used in course of providing works contract service, i.e. notification 24/2012-ST , the assessee should ensure, proper supporting documents are maintained supporting the deduction claimed by the assessee, else the benefit of the said notification could be denied. Further the deduction towards value of material would not be available on adhoc basis.

- The assessee should also have a proper referencing system through which the various documents are linked. This linking can be brought about through quoting the bill numbers and the voucher references on the registers being maintained which would also ensure that no bill or voucher has been left out.
- The list of records is to be declared within the end of the month in which the first return being filed.

PAYMENT OF SERVICE TAX

Service tax is payable on the amount or value of taxable service received and not on the gross amount billed. But even today there are quite a few service providers who pay on the amount billed i.e. following accrual basis. In case, any advance is received for service to be provided then the service provider shall pay the service tax on the amount received. Where the service is not provided and the amounts are refunded to the service receiver, such service tax paid can be adjusted in the returns by the service provider, however Finance Bill 2011 has introduce point of taxation Rules 2011, and these rules would transform from cash basis of accounting to accrual basis of accounting.

Determination of Point of Taxation

Point of taxation Rules, 2011 came in to effect from 01.04.2011.

A. Point of taxation shall be determined as under (Rule 3)

The point of taxation is the earliest of the following

i. Date of invoice
ii. Date of completion of provision of service
iii. Date of payment

Earlier the provision for continuos supply of service was provided in Rule 6. Wef 1.4.2012 this was inserted in proviso to Rule 3. As per proviso, the point of taxation for continuos supply of service is as follows-

Where the provision of whole or part of the service is determined periodically on completion of event which is as per contract entered, which requires the receiver of service to make payment to service provider, then the point of taxation would be completion of event.

To sum up:

Scenario	Point of taxation
Invoice issued within 30 days of completion of service	Date of invoice
Service completed but invoice not	Date of completion of service

issued within 30 days	
Advance received before completion	Date of receipt to extent of advance received.
Invoice issued before completion of service	Date of invoice
In case of continuos supply of service	Completion of respective events as per contract entered

b. Determination of point of taxation in case of change in rate of tax (Rule 4)

Notwithstanding any thing contained in Rule 3, point of taxation in case of change of rate shall be determined in the following manner.

When taxable service was provided before change of rate

i. Where invoice for the same is issued and payment received after change of rate – Point of is date of payment or date of issuing of invoice which ever is earlier. Or

ii. Where invoice is raised prior to change in tax rate, but payment is received after change of rate – Point of taxation is date of issuing of invoice. Or

iii. Where payment is also received before change in rate, but invoice for the same has been issued after change of rate – Point of taxation is date of payment.

Determination of point of taxation after change in rate of tax

i. Where the payment for invoice is also made after the change in tax rate, but invoice has been issued prior to change in rate – point of taxation shall be date of payment. Or

Note: The author is of the opinion that the concept of accrual or cash which ever is beneficial to the revenue is being adopted here

ii. Where the invoice has been issued and the payment for the invoice was received before change in tax rate– point of taxation shall be date of receipt of payment or issue of invoice which ever is earlier. Or

iii. Where the invoice has been raised after the change of rate , but payment has been received before the change of rate, point of taxation shall be date of rising the invoice

Note: The author is of the option that the concept of accrual or cash which ever is beneficial to the revenue is being adopted here

B. Payment of taxes in case of new services (Rule 5)

Where a service is being taxed for the first time, not being covered under Rule 6

i. No tax shall be payable to an extent of invoice being raised and payment being received before such service became taxable

ii. No tax shall be payable, if payment was received before such service became taxable and invoice was issued within 14 days as per Rule 4A of Service Tax Rules 1994.

C. Determination of point of taxation in case of the following :(Rule 7) In case of persons liable to pay service tax under reverse charge mechanism GTA, sponsorship, and import of services as well as other services where the service tax liable to be paid by the recipient of service, if the payment has been made before 6 months from the date of payment.

However if the payment is not made within 6 months of date of invoice, the general rule as explained above would be applicable.

In case of associated enterprises date of credit in the books of accounts or making payment whichever is earlier would be considered as point of taxation.

The Rule 6 of Service Tax Rules gives an option to individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is Rs 50 Lakhs or less during the previous financial year to pay tax on receipt basis upto Rs 50 Lakhs.

D. Determination of point of taxation in case of a copy right (Rule 8)

In case of royalties and payments pertaining to copyrights, trademarks,designs or patents, where whole amount of consideration for provision of service was not ascertainable at the point of performance of service and subsequently use of benefit of

these services results in payment of consideration, service shall be treated as having been provided each time when a payment is received in respect of use of such benefit or raising of invoice, which ever was earlier

E. These rules shall not be applicable for invoices issued prior to 1st April 2011.

As per old Rule 7 of Point of Taxation Rules applicable upto 31.3.2012, the point of taxation for a few specified service providers was receipt of consideration from customer. Hence for year 2011-12 such specified service providers such as Chartered accountants were paying service tax on receipt basis. The service tax rate was increased from 10 to 12% wef 1.4.2012.

Due to this there was a confusion in minds of such service providers whether to pay service tax at 10% or 12%. There was a circular issued by the CBEC stating service tax to be paid at 12%.

The H'nble High Court in decision in Delhi Chartered Accountant Society(Regd) vs UOI (2013(29) STR 461 (Del) quashed the circulars as contrary to provisions of service tax and held that service tax required to be paid @10% for above mentioned situation as providing of service is important.

Note: These provisions would result in widespread inequality and pain to the tax compliant service provider. The same is against the Accounting Standard of Revenue Recognition – AS-9 and also would not be practicable for professional who are under the cash system of accounting for decades. Some exceptions may have to be put in place to mitigate this hardship.

Service tax is to be paid on the gross value of taxable service, and not on the net amount realized from the service receiver after deduction of tax at source (TDS) under the Income Tax Act 1961.

The service tax determined as per Point of Taxation Rules 2011, shall be paid to the credit of central government by 5th of the subsequent month (6th of the subsequent month if payment is made electronically) and the amount is to be paid by 31st of March for the month of March of the financial year. From 01.04.2010 e-payment of service tax is mandatory for those who had paid central excise duty or service tax of Rs. 10 lakhs or more in the preceding financial year, whether by cash or debit in Cenvat credit account or both vide circular No. 919/09/2010-CX dated 23.03.2010.

If the service provider happens to be individual or proprietary firm or partnership firm the service tax amount has to be paid by 5th of the subsequent month, following the quarter (6th of the month following the quarter if done electronically) and 31st of March for the quarter ending March of the financial year.

As per Rule 2A the date of payment is as follows-

The earlier of following dates would be considered as date of payment-

e. Date on which payment is entered in books of account.

f. Date on which payment is credited to bank account of person liable to pay tax.

.

Further the date of book entry would not be considered and only date of credit into bank account would be considered if all the following conditions are satisfied.

a. Between date of entry and date of credit there is change in effective rate of tax or when a service is taxed for the first time and
b. The credit in the bank account is after 4 working days from date of rate change or new levy.
c. The payment is made by way of an instrument which is credited to bank account.

How to pay service tax?

- The service provider shall himself assess the tax payable for the month or quarter as the case may be on the basis of Point of Taxation Rules 2011.
- He shall then ascertain the amount of credits left in balance at the end of the period stated above for which payment is being made. He shall then reduce the credits balance to the extent available or to the extent of his liability whichever is lesser.
- Where any amount is remaining payable after the adjustment discussed above against the credits, the same shall be remitted within the due dates explained above.
- The amount shall be paid into the designated bank account using the form GAR 7 which is filled up. The amounts are to be rounded off to the nearest rupee. Separate accounting codes have been notified for service tax, education cess, secondary and higher education cess, interest, penalties etc.The service provider remitting the tax shall segregate these amounts and pay the same under the respective codes.

Note: - If excess payment is made, then the amount paid in excess shall be adjusted in the subsequent monthwithout any limit .

The service provider on his failure to pay the amount within the notified date shall be liable to pay interest at the rate of 18% p.a.

If the service provider is unable to quantify the amount of service tax payable, then he may request AC/DC of Central Excise to allow the service provider to pay on provisional basis along with the reasons.

Now rule 6(1A) allows the service providers liable to pay service tax to make the payment in advance and adjust the same for the liability in subsequent period. However such payment in advance has to be intimated to the department within 15 days from the date of making such payment and the details of such advance payment and adjustment thereof shall be indicated in the returns.

SERVICE TAX RETURNS

Filing of service tax returns has been one aspect in service tax compliance which has been posing considerable problems for assessees. One of the main reasons is that in past till 1.7.2011, the service tax had to be paid not on billing basis but on receipt of consideration from customers. Thus all organizations especially those where transaction are in thousands should have a good accounting system in order to enable them to link the bills with the amounts received. The concept sounds simple but few organizations really implement the same in spirit. As a result, they face considerable problems in filing the service tax returns as one is expected to give details as to the amounts received towards taxable services.

The delays in filing entail fines and non filing an enquiry under best judgment.. Other than that it would be one of the criterions for picking up the unit for audit under the risk based selection proposed for the service tax audit.

Every service provider liable to pay service tax is required to submit half yearly return in form ST-3 within 25 days from the end of half year, i.e. April to September 25th October and for October to March 25th April is the due date to file the returns.

Even an input service distributor is required to file half year returns, even if he was not liable to pay service tax.

In case last date to file the return was a public holiday then the last day to file the returns would be the next working date.

How to file the service tax return?

- Form ST 3 or ST 3A as the case may be has to be filed in triplicate to the Superintendent of Central Excise. From 01.04.2010 e-filing of return is mandatory for those who had paid central excise duty or service tax of Rs. 10 lakhs or more in the preceding financial year, whether by cash or debit in Cenvat credit account or both vide circular No. 919/09/2010-CX dated 23.03.2010. (Refer Appendix – II for case studies on filing of Form ST-3)
- The return has to be filed once in six months and it contains the particulars of all the six months
- The value of taxable services should be computed on the basis of gross amount received or advance received for the services provided/to be provided
- A nil return is required to be filed if there are no transactions

- GAR 7 evidencing payment has to be filed along with the return
- If any amount representing interest or penalty is paid, then references of such payment along with the particulars are required to be made.
- The ST 3 return is to be submitted within 25th of the subsequent month following the quarter i.e. For the half year April to September, the due date is 25Th of October and 25th of April for the next half year.
- If the day happens to be a public holiday, then the return can be submitted on the next working day immediately following the holiday.
- The return may be submitted electronically using e-filing facility in ACES utility.

What is the procedure to file the returns online?

The assesses can electronically Fill ST-3 by choosing one of the two facilities being offered: (a) they can file it online, or

(b) download the off-line return utilities which can be filled-in off-line and uploaded to the system through the internet.

Steps for preparing and filing returns:-

(i) Assessee can download the Offline return preparation utility available at http://www.aces.gov.in (Under Download)

(ii) Fill the return offline using this utility. The return preparation utility contains preliminary validations which are thrown up by the utility from time to time.

(iii) Assessee then should log in using the User ID and password.

(iv) Select "RET" option from the main menu and further choose required activity such as e-filing/ amending/Revise return as the case may be and upload the return.

(v) Returns uploaded through this procedure are validated by the ACES before acceptance into the system which may take up to one business day. Assessee can track the status of the return by selecting the appropriate option in the RET sub menu. The status will appear as "uploaded" meaning under process by ACES, "Filed" meaning successfully accepted by the system or "Rejected" meaning the ACES has rejected the return due to validation error. The rejected returns can be resubmitted after corrections.

(vi) Returns can also be prepared and filed on line by selecting the 'File Return' option under RET module after logging into the ACES.

(vii) All validations are thrown up during the preparation of the return in this mode and the status of the return filed using the online mode is instantaneously shown by ACES.

It is recommended that assessees who are for the first time filing returns through ACES shall do it through the offline utility so that the mistakes and the changes can be done instantly.

Can a revised return be filed?

Yes. Rule 7B of Service tax Rules 1994 allow an assessee to revise the return filed under Rule 7 to correct any error, omission or mistake within 90 days from the date of filing the return u/r 7.

Can the revised return be filed after the expiry of 90 days from the date of filing the original return?

There is no provision for submission of revised return after the expiry of 90 days from the date of filing the original return, however as per the authors view, service provider shall intimate such changes to department via letter, which should be duly acknowledged, and the said changes needs to be factored in while preparing the subsequent returns. This would be required to ensure that errors are not carried forward.

Note: -

- *An annexure is provided to the said form (ST 3 return) providing tips for filing up the particulars of the return. The list of tips for filling up the ST-3 returns in new format as applicable wef 1.7.2012 is in appendice III.*
- *The form can be downloaded from the departmental website (www.cbec.gov.in)*
- *ST 3A is used when the assessee opts for provisional assessment. The assessee shall for this purpose make a request in writing to the ACCE/DCCE giving reasons for payment of service tax on provisional basis and the payment can be made on the taxable value as specified by ACCE/DCCE on provisional basis. The assessment would be finalised later and the provisions of Central Excise Rules with regard to provisional assessment would apply here. However, execution of bond would not be required here.*
- *A single return is sufficient even though the service provider is providing more than one taxable service.*
- *The ST 3 return can be filed electronically.*

SERVICE TAX AUDITS BY PROFESSIONALS

A service provider cannot ignore compliance with the legal provisions for the reason that if he does so, the non-compliance would invariable hit his business hard considering the competitive margins involved as well as the impact of interest and penalty becoming increasingly harsh day by day.

It has been the experience that very often assessees are not even aware of the fact that they are not complying with the legal provisions till such time when they are called upon by the department to furnish some clarifications or their unit is taken up for an audit.

Assessees in this regard should note that considering the uncertain nature of the law, the frequent amendments by way of notification, clarifications by the Tax Research Unit (TRU), Central Board of Excise& Customs (CBEC), Director General Service Tax (DGST) other than Regional Advisory Committee and Commissioners clarification the law would continue to be unclear. Many advocates of the Supreme Court with decades of standing in the Indirect taxes opine that there is no surety in this segment. Therefore a mechanism would have to be built in to ensure that compliance is maintained at high levels all the times. This would require a comprehensive framework to be put in place which would ensure proper training of employees as well as seeking professional opinion from time to time on matters of doubt plus a review of the documentation, records pertaining to service tax by either the internal audit team of the concern or by an independent professional.

What is required of the auditor?

An auditor engaged for the assignment should understand the business, the environment in which the industry works the common confusions prevalent in the industry in addition to the knowledge of service tax law. The knowledge about the latest auditing procedures and techniques to be adopted would also maximize the benefits to the client. Use of the audit tools especially the generalized audit software for large concerns would enhance the results. As far as carrying out the audit itself is concerned, he can follow the guidelines given below:

1. Ascertaining scope of the assignment

The auditor should first understand the requirements of the management. The scope of the assignment should be designed by the auditor considering the requirement. This is to avoid a scenario where the client perceives the audit effort in a different way from the one it actually is.

This is quite common in the service sector as the concept of service tax audit is new to them as well as the fact that clients are specialists in their respective fields with no much of exposure to subject of accounting or auditing. At times the client may wish a pre- audit or shifting of the responsibility of compliance on the auditor.

Further many a time assessees in the service sector mistake auditing for outsourcing and expect the auditor to engage in an outsourcing job rather than reporting to the management on compliance related issues. The scope can be ascertained and confirmed by preparing a letter/scope document entailing the areas which would be covered and the aspects which would not be taken up during the audit.

2. Knowledge of the business and the activities performed

This is one of the most important aspects to be taken care of by the auditor. The auditor should first of all understand the assessee's business, the services he provides, the activities that are involved at various levels of the organisation in providing these services, the customer profile whether sub contracted or not etc. before the start of his review/verification. For this purpose, he may interview the key management personnel in the organisation besides going through major contracts and agreements, organisation chart, manuals and publications of the organisation. He should also make it a point to visit the premises from where the services are provided, to the extent possible and interview the technicians / engineers who actually perform the tasks (where ever applicable) to get a first hand information of the nature of the processes involved in case of services of a technical nature.

3. Obtaining relevant information for a preliminary review and risk analysis

The auditor should make it a point to understand the financial performance of the entity in the recent past as well as the during the audit period, apart from analyzing the same it would also help in devising his procedures accordingly. He/she should also make it a point to perform a quick review of the concerned records like the service tax returns, cenvat bills, invoices and agreements with major clients'/customers so that the risk arising from non-compliance can be assessed. The following aspects assume significance –

- Review of the past audited financial statements for understanding the past financial performance in terms of incomes, expenses, receipts and payments apart from accounting policies and nature of investments

- Review of the ledgers for the period under audit to check the income and expenditure pattern besides understanding the customer profile and the pattern of billing
- Review of the cenvat invoices, agreements with major customers, service bills raised on customers by the assessee, Excise invoices if any raised by the assessee, review of the fixed asset registers to form an idea as to record keeping and compliance with the law.
- The auditor should have a grip with the organizational structure of the assessee with the assignment of responsibilities with the associated internal controls. For this he would be required to use an Internal Control Questionnaire which would document the areas where the controls are sought to be tested. He should also specifically address the issue as to the internal reporting framework and MIS in his questionnaire so that the functional linkages can be checked. Where ever possible, the auditor could take copies of the organizational chart and manuals for his permanent audit file.

The auditor would have to document his findings so that he can effectively move on to the next stage. For this purpose, he/she may use an assessee profile which would consist of all relevant information needed for a desk review. The assessee profile should be drawn up in such a way that apart from financial indicators, even the non-financial indicators like existence of branches, manner of providing services etc are also reflected. This could form part of the permanent audit file to be used even in subsequent audits. (Draft Asseessee Profile at the end of this chapter)

4. Desk review of the information obtained and preliminary meeting

The auditor, on the basis of his/her findings at the previous stage, should carry out a desk review of the information available with him to arrive at proper conclusions as far as the possible risk levels involved, are concerned. The desk review should ideally indicate to the auditor the level of checking required and the areas he should concentrate upon in order to arrive at proper conclusions at the end of the audit. On the basis of the review he should document the risk level prevalent in the audit. It is always preferable in this modern day that the auditor spends at least 20% of his time in planning the audit after getting the idea of the process and people involved in the client's organization to enhance his effectiveness.

Once this has been done, he should identify the audit team that would take up the task and discuss the preliminary findings with the members of the team to appraise them of the likely issues that

could crop up during the audit apart from explaining the impact the legal provisions would have on the assessee's business and his activities.

5. Devising the audit program for carrying out compliance and substantive tests

The audit plan should basically aim at performing the audit with maximum efficiency possible under the circumstances. This is possible only where the audit team is able to address contentious and core issues within a limited time frame. The auditor should devise a proper audit plan only after carrying out a desk review so that the same would be more effective than a program which is common to all audits irrespective of the differences in services, related activities and the risk levels involved. This would enable the auditor to concentrate on key areas which would be relevant to arrive at proper conclusions at the end of the audit. The time factor also needs to be kept in view especially when the audit is done with specific objective such as a pre-audit for ensuring preparedness before department audit. The audit check list should indicate the areas to be covered and the individuals who are supposed to take it up. (See at end of Chapter)

6. Documentation and proper supervision of audit effort

The auditor should ensure that the audit findings and the explanations given from the assessee are documented properly by his audit team. A standardized pattern may also be followed to facilitate easy reading of the observations. The team should ideally consist of individuals at various stages of a learning curve. The team can consist of three members with one of the members being a senior with sufficient experience and two juniors. The responsibility of supervising the team on a daily basis would be with the senior and the entire audit effort would have to be supervised at regular intervals by the qualified professional/partner. The audit findings should be discussed at periodic intervals (if not on daily basis) with the executive designated from the assessee's side so as to ensure assessee's cooperation. This would also ensure that the audit is headed along the right path with every likely-hood of achieving its intended objectives at the conclusion stage.

7. Formulation of the draft report and discussions with the management

Once the audit has been completed, the draft report containing the draft of the observations should be formulated and a copy is sent to the management. This would then be followed up with a discussion of the points in order to ascertain the future course of action to be taken, which should also be documented. The report should make it clear as to whether the assessee has agreed to his/her findings or disputed the same. The auditor could come up with valuable suggestions

here in order to secure effective compliance with the law and in order to avoid pit falls in future. This discussion is critical for the acceptance of the observation and its correction.

8. Finalizing the draft and ensuring audit follow up

Once the draft has been prepared, the points discussed with the management and future course of action ascertained, the final report is to be sent on a timely basis. The report shall contain all the relevant details like the observations, the reply from the assessee's side, the corrective action taken up by the assessee, the course of action which is to be taken in the future. The auditor's responsibility does not end here and he would have to ensure proper follow up by going through the steps taken up by the assessee for the purpose of ensuring compliance with the law.

Pointers for practice

- The auditor should be well versed in the matters pertaining to service tax and to a certain extent central excise and should have a clear understanding of the legal provisions and its possible implications on an assessee's business depending upon the activities performed.
- He should have the ability to get the required information from the assessee in a way that would enable him to ascertain the legal impact on the assessee's business. This in fact could be a big challenge as he would have to pose his queries in a way the assessee understands the same so that the right answers and explanations can be obtained from him.
- The auditor should also be careful not to treat the audit like a fault finding exercise as it would result in the client losing interest in the audit itself and thereby negating the very purpose of audit.
- These audits could be said to be consultative exercise as differentiated from a regular internal audit. Therefore it maybe a good idea for the auditor to appraise the client on the latest amendments and Tribunal judgments in regard to the issues of interest/ concerns.

Illustrative audit program for Service Tax Audit

Name of the auditee: - *Address: -* *Contact persons: -* *Contact numbers: -* *E-mail: -*	*Period under audit: -* *Reviewed by: -*

Area covered during audit	*Checked by*	*No of days taken*
1. Initial reviews and visits		
a) Review of the past audited financial statements		
b) Review of the activities of the enterprise *Site visits/department visits if any* *Interviewing functional chiefs/mgnt personnel* *Review of process charts/publications of the assessee*		
c) Review of the ledgers and trial balances for the current period		
d) Review of the agreements with the major customers/clients of the enterprise		
e) Review of the cenvat bills and bills for provisions of services		
f) Review of the correspondences with the authorities		
g) Review of the Service Tax Returns to scan for details as to classification of services and payments		
h) Review the methodology being adopted for taxing the value towards materials in case of works contract		
i) Check for transactions with associated enterprises which may attract service tax levy		
j) Check what is the place of provision of services by assessee in accordance with the relevant rules and whether there are payments in excess or shortfall in payments made?		
2. Review of the liabilities on account of service tax		
a) Review the expenses accounts made in foreign currencies. If found to exist - *Check the nature of payments by going through agreements* *Check whether applicable service tax paid by cross verifying with the returns*		
b) Review the income accounts to check the impact on service tax. Check the possibility of the activities being		

regarded as taxable services by ascertaining the nature of services from agreements/orders with customers. *Check the valuation methodology-whether all charges included for tax?*		
c) Check for freight expenses. If they exist, *Cross verify with expenses files for consignment notes.* *Cross verify with the returns for details as to payments*		
d) Cross verify the bills for services provided with the statement/workings for filing of service tax returns. Check the accuracy as to – *Value of service* *Service tax amounts including cess* *Exemptions being claimed*		
e) Cross verify the statements/accounts facilitating furnishing of returns with the totals as per returns in terms of – *Value of taxable services* *Exemptions/abatements* *Service tax amounts with cess*		
f) Check for traces of payment of sponsorship money and the purpose for which it has been paid		
3. Review of Cenvat and possible reversals		
a) Review the fixed assets register to list out the assets being used for providing taxable services. *Check whether cenvat Credits have been claimed on non-productive assets by cross verifying the purchase details with that in the Cenvat register* *Check the physical location of assets* *Check whether assets sent out and if so, whether a record of the same is available. Whether it is returnable?*		
b) Cross verify the cenvat invoices with the cenvat register. Verify details –		

Cenvat amount *Basic values, addressor, addressee* *Item/service description* *Cross check the totals as per Cenvat register with the figures as per returns* *Check whether –* *In case of input services, whether the credit has been availed considering Point of Taxation Rules* *In case of inputs whether inputs really received?* *Check whether the assessee has opted for centralised registration or Input Service Distributor route.*		
c) Check whether inputs/capital goods/tools removed for job work and if so whether a register has been kept for the same and whether the same are sent on returnable basis? *Whether applicable credits have been reversed where ever necessary?*		
d) Check whether the assessee has balance of credits pertaining to export of services which cannot be utilized. If so, *Check whether the assessee has gone in for rebate, refund of the credits or rebate of service tax paid?*		
e) Check whether the credits admissible have been calculated correctly where Rule 6 of CCR 2004 applies in respect of both taxable an exempted services being provided?		
f) Check the documentation in case of availment of credits on bills of ISD. Check the returns filed		
4. Other areas		
a) Check whether the assessee has a system of reconciliation between the figures as per financial ledgers and those as per returns		
b) Check whether the assessee is also a manufacturer		

and if so whether applicable duties of CE are charged? If not, whether there is any process carried out which can be deemed to amount to manufacture or which amounts to manufacture as per CEA 1944.		
c) Where exemptions are claimed, whether any condition of the notifications have been flouted? Cross check with the appropriate notification		

Note: A more comprehensive/ modified programs maybe required depending on the nature, decentalised method of operation, mode of recording, level of management involvement in accounting among other factors.

ILLUSTRATIVE SERVICE TAX ASSESSEE PROFILE

Name and address of the assessee: - *Contact persons: -* *Contact number and e-mail ID*	*Profile reviewed by: -*

Area being covered	*Remarks*
1. Ascertain the past record pertaining to matters litigated or demands raised by the department and complied by the assessee	
Assess risk level – High, Low or Moderate	
2. Ascertain the nature of services provided by the assessee and detail the classification adopted by the assessee for payment.	
Assess risk level – High, Low or Moderate	
3. Whether any manufacturing involved? If so, whether assessee is registered under CE?	
Assess risk level – High, Low or Moderate	
4. Whether the assessee has incurred expenditure in foreign currency and if so – *Whether the assessee has registered for paying applicable taxes?*	
Assess risk level – High, Low or Moderate	

5. Whether the assessee has associates or companies within the same group with whom transactions exist?	
Assess risk level – High, Low or Moderate	
6. Whether assessee has expenditure within India on services with regard to which the service receiver is liable? If so, whether assessee is registered for paying applicable taxes?	
Assess risk level – High, Low or Moderate	
7. Ascertain the method adopted by the assessee to calculate his liability under the local sales tax/VAT law of the concerned state.	
Assess risk level – High, Low or Moderate	
8. Ascertain whether the assessee has multiple units/branches to provide services or for operations and the documentation handled by these offices/units.	
Assess risk level – High, Low or Moderate	
9. Ascertain whether service tax matters handled by select individuals. If so, whether they are knowledgeable?	
Assess risk level – High, Low or Moderate	
10. Ascertain the reporting frame work within the organisation and the existence of proper MIS.	
Assess risk level – High, Low or Moderate	
Overall audit risk on the basis of points noted – High, Low or Moderate	

FREQUENT ERRORS COMMITTED IN SERVICE TAX

Since service tax was introduced recently as compared to Central Excise Act and Customs Act which have been in force for more than three decades now, and since the subject has been seeing a lot of changes every year, the chances of the assessees (especially those who are new to service tax) going wrong or committing mistakes at the initial stages of compliance are quite high. In this segment we shall take a close look at some of the errors we have noticed from the assessees. The assessees are advised to be careful in this regard to ensure that they do not commit the mistakes given here –

1. Wrongly classifying the services under a category which is not applicable to them.
2. Wrong availment of cenvat credit on ineligible documents.
3. Wrong availment of Cenvat credit upto 4th of the subsequent month instead of availing credit upto 30th or 31st of the month as the case may be.
4. Wrong availment of cenvat credits on services which do not qualify as input services such as construction credits for setting up within the definition of input service as given in Cenvat Credit Rules 2004
5. Short payment or excess payment of service tax due to improper accounting of the amounts collected from the customers/clients especially on account of service tax
6. Non-payment of service tax liability for the month of March by 31st March.
7. Mistakes being committed while filling up the ST 3 returns with regard to the value of taxable services, amounts received and the exemptions availed
8. Treating the services provided from India to a person abroad as Export of Service when it is not satisfying conditions to be treated as an export of service as per Rule 6A of Service Tax Rules
9. Failing to pay tax u/s 68(2) on services received in India from abroad when the same constitutes an import of service
10. Failing to obtain registration under service tax for being an recipient of service in service specified in rule 2(1)(d)
11. Paying service tax on the gross value including amounts charged for transfer of property in goods when the assessee could have claimed deduction for such transfer of property in goods under Rule 2A of ST Valuation Rules.

12. Not considering out of pocket expense while discharging service tax as per Rule 5(1) of the Valuation rules.
13. Exporting services but not going in for either the rebate of service tax or refund under Rule 5 of Cenvat Credit Rules
14. Considering export of service as exempted service
15. Claiming full cenvat credit when the service provider has both taxable as well as exempted services
16. Utilising the cenvat credits in respect of the exempted services which are exported
17. Paying service tax as well as excise duty on service charges where the manufactured goods are installed at the customer's premises
18. Excluding the expenses reimbursed by the service receiver from the purview of service tax where the same is not incurred by the service provider as a pure agent of the service receiver
19. Non segregation of the education cess and Secondary Higher Education cess amounts from the basic portion of service tax
20. Not fulfilling the conditions laid down by the exemption notifications while claiming exemption benefits
21. Collecting service tax from the customers/clients but not paying the same to the government
22. Not registering and paying service tax in respect of those services where the service receiver is liable to pay tax u/s 68(2)
23. Availing input service credits before the payments of service tax and value of services can be made to the input service provider
24. Not availing cenvat credits in respect of input services on a timely basis thereby necessitating the payment of taxes in cash
25. Assesee fail to obtain copy of relied upon documents which the Service Tax audit team use as a basis to issue SCN.
26. In case of summons and during investigation, assessees tend to accept the department raise objection, and blindly signs the statement dictated /recorded by the department.

These are some of many and a deeper analysis would lead to more issues which are quite common especially in each of the individual services.

OTHER MISCELLANEOUS ASPECTS IN SERVICE TAX

Interest and penalty calculations

The Finance Act 1994 has prescribed interest and penalties for contravention of any provisions or rules made under the act. No penalty is leviable under sec 76, 77 or 78 if the assessee proves that there was reasonable cause for such failure. The relaxation is provided u/s sec 80. This relaxation is provided only under service tax law. As per statutory provisions only one penalty can be imposed for delay in taking registration for more than one taxable service or for delay in filing of return by assessee providing more than one taxable service. Interest payments are mandatory and cannot be waived however penalty can be waived partially or fully. Penalty u/s 76, which is levied for failure to pay tax, cannot exceed the tax payable. Further penalties under sec 76 and 78 are mutually exclusive.

Illustration 1: Mr. NS Sidhu was liable to remit the service tax to the tune of Rs 75000 for the month of March., Mr. NS Sidhu was a tax compliant service provider and he was of the understanding that the due date is 5th of subsequent month and paid the amount by Apr 5th. Later on Mr. NS Sidhu realizes his mistake and wants to pay the interest for delayed portion.

Solution:

Particulars	Amount
Due date for payment	31st March
Date of Payment	5th of April
Days of Delay	5
Rate of interest	13%
Amount of interest to be paid	Rs 75000 X 13% X 5/365 = 133/-

The amount of interest is required to be paid in cash and adjustment in cenvat credit account would not be available.

Illustration 2: Mr. Prince, service provider fails to pay service tax of Rs 8 lakhs payable by 5th January. Mr. Prince pays it on 20th January. The default has continued for 15 days. Quantify the penalty to be paid by Mr. Prince.

Solution:

Particulars	Amount
Default in amount	8 lakhs
Days of default	15 days
Penalty (a)	2% X 8 lakhs X 15/31 =7741
(b)	200 per day X 15 days= 3000
Penalty under sec 76 is higher of (a) and (b)	Rs 7741/-

The amount of interest is required to be paid in cash and adjustment in cenvat credit account would not be available.

Provisions as to penalty

The provisions as to penalty under service tax are as follows –

- Section 76 – Deals with penalty to pay service tax at Rs. 200 per day of failure or at 2% of such tax per month whichever is higher, from the first day after due date up to the date of actual payment. Penalty however cannot exceed service tax payable. It is proposed to reduce the penalty by half of what is presently being levied.
- Section 78 – Deals with penalty for suppression of value of taxable service and the penalty shall not be less than the service tax and shall not exceed twice the amount of service tax payable. This can be reduced on payment of tax and interest within the stated period of 30 days as explained earlier, along with the penalty determined. (*Where penalty is levied u/s 78, no penalty shall apply u/s 76)*

  However the revised penal provisions which is effective from the date to be notified is provided below.

Situation	Position in records	Penalty and provision	Mitigation	Complete waiver
No fraud, suppression etc	Captured	1% of tax or Rs 100 per day upto 50% of tax amount (Sec 76)	Totally mitigated if tax and interest is paid before issue of notice	On showing reasonable cause under section 80
Cases of fraud, suppression etc	Captured true and complete position in records	50% of the tax amount (proviso to section 78)	(a) 1% P.M: max of 25% if all dues paid before issue of notice (b) 25% of tax if all	On showing reasonable cause under section 80

			dues paid within 30 days (90 days for small assessee)	
	Not so captured	Equal amount section 78	No mitigation	Not possible

- Section 77 – Deals with penalty for a contravention where no penalty is prescribed under law -

Particulars	***Amount of penalty in Rs.***
On account of failure to make payment and take registration under service tax	Rs. 200 per day of default or a sum of Rs. 5000 whichever is higher
On account of failure to make electronic payment of tax	Rs. 5000
Failure to maintain proper records or books	Rs. 5000
Failure to furnish information called for under this chapter orFailure to furnish documents required under this chapter orFailure to appear before CEO when issued summons to appear or produce documents in an inquiry	Rs 200 per day of default or a sum of Rs. 5000 which ever is higher
Failure to issue proper invoice or issuing invoice with incorrect or incomplete details or failure to account invoice in books	Rs. 5000
Other cases	Rs. 5000

(It is know proposed to enhance the penalty from Rs 5000/- to Rs 10,000/-)

Searching of premises by authorized officers

The Commissioner of Central Excise u/s 82 can authorize any ACCE/DCCE to search for and seize documents or books or things, which have been secreted in any place and which in his opinion would be useful for or relevant to any proceeding under this chapter. He may even take up the task himself. The Code of Criminal Procedure 1973 shall also apply here.

Other recovery provisions

Section 87 of the Finance Act 1994, empowers the Central Excise Officer (CEO) to require any other person or other CEO to deduct the amounts due to the government from the assessee and pay the same. This deduction would be relevant where the person to whom a notice has been

issued, owes something to the person who owes money to the government. Where the person to whom a notice is issued does not pay the amount, he himself would be treated as an assessee in default. The CEO can even send a certificate specifying the amount due, to the collector of the district where the person liable to pay resides or has his property. This would be so where the district is different from the one over which the CEO has jurisdiction.

Liability under Act to be First Charge

Section 88: Where an assessee owing dues (amount of tax , penalty interest or any other sum) payable by the assessee or any person under this chapter, shall be first charged to as provided in Recovery of Debt Due to Banks and Financial Institution Act 1993 and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002

Offence and penalties

Section 89: Where an offence namely

a. *knowingly evades payment of service tax or*
b. *Irregular availment of cenvat credit without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under this chapter or*
c. *Maintains false books of accounts or fails to supply any information which he is required to supply under this chapter or rules made there under or*
d. *Collects any amount as service as service taxbut fails to pay the amount so collected to the credit of the central government beyond a period of 6 months from the date on which such payment becomes due.*

Shall be punishable with imprisonment for the period as may be prescribed.

The offences set out at (a), (b),(c) where amounts exceed specified amounts Rs 50 Lakhs and provides for imprisonment for term upto 3 years, is cognizable.

All other offences are non-cognisable and bailable.

Application of the provisions of the Central Excise Act 1944

The assessee should note that certain provisions of Central Excise Act 1944 would also apply with regard to service tax by virtue of section 83. Thus with regard to these aspects, the aforesaid law would have to be referred. Some of the important aspects with regard to which the provisions of CEA 1994 would apply are as follows –

- Certain offences to be non-cognizable (Sec 9A).
- Offences by companies (Sec 9AA)

- Power of Court to publish name, place of business, etc., of persons convicted under the Act.(Sec 9B)
- Presumption of culpable mental state (Sec 9C)
- Relevancy of statements under certain circumstances (Sec 9D)
- Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958 (Sec 9E)
- Claim for refund of duty (Sec 11B)
- Interest on delayed refunds (Sec 11BB)
- Power not to recover duty of excise not levied or short-levied as a result of general practice (Sec 11C)
- Application of the provisions of [Act No. 52 of 1962] to Central Excise Duties (Sec12)
- Declaration of the amount of duty on invoice (Sec 12A)
- Presumption that the incidence of duty has been passed on to the buyer (Sec 12B)
- Crediting of refunds to Consumer Welfare Fund (Sec 12C)
- Utilisation of the Fund (Sec 12D)
- Powers of Central Excise Officers (Sec12E)
- Power to summon persons to give evidence and produce documents in inquiries under this Act (Sec 14)
- Special audit in cases where credits availed or utilized are not within normal limits (Sec 14AA)
- Officers required to assist Central Excise Officers (Sec15)
- Procedure for adjudication (Sec 33A)
- Confiscation or penalty not to interfere with other punishments (Sec 34A)
- Deposit of duty pending appeal (Sec 35F)
- Sections 35FF to 35 –O dealing with AppealsInstruction to officers (Sec. 37B)
- Service of decisions, orders, summons etc (Sec 37C)
- Effect of amendments of rules, notifications etc (Sec 38A)

The professional who advises on service tax should be aware of the implications of the above provisions which maybe judicially clear as they have gone through a number of years of modifications.

SOME OF THE IMPORTANT COMMON SERVICES

[relevant for any disputes for period prior to 1.7.2012]

The limitation in the size of this book constrains us from discussing many/ all the services. We restrict to the ones where we find there is more potential for disputes and litigation possible for previous years.

Renting of Immovable Property Services

Renting of immovable property service was brought under service tax net with effect from 01.06.07. This levy has led to a lot of confusion as one does not associate letting out of immovable property with the concept of service for the simple reason that there is strictly speaking, no service involved. This aspect however this year has been addressed by the Delhi High Court in responding to the writ petition filed by certain assessees who had challenged the levy of service tax on the renting of immovable property. The High Court has in Home Solution Retail India Ltd Vs Union of India (2009-TIOL-196-DEL-HC-ST) sought to draw a distinction between "service in relation to renting of immovable property" and "renting of immovable property" and held that renting in itself would not amount to provision of taxable service and held both notification 24/2007 ST and circular 98/1/2007 ST to be ultra vires the Act as far as requirement for levy of service tax on renting is concerned. In the meantime the Finance Act 2010 has amended the definition of the taxable service in this respect, retrospectively from the date of introduction of the service, to include mere renting of immovable property also in the tax net. But Delhi High Court has again granted stay to Home Solution Retail (I) Ltd. in W.P. (c) No 3398 of 2010 on 18.05.2010 from payment of service tax on mere renting of immovable property. On contrary to Delhi High Court decision Punjab and Harayana high court in case of in case of Shubh Timb Steels limited Vs UOI passed an order dated 22.11.2010 upholding the validity of levy of service tax on renting of immovable property with retrospective amendment made in Finance Act 1994 vide Finance Act 2010, in provisions relating to service tax on renting of immovable property.

Constitutional validity

As per Entry 49 of list II, tax on land and building is a subject matter of state, there are divergent views in this aspect, wherein one view is that service tax cannot be levied under residuary item in

list I by central government. However the other view is that service tax is not directly on land or building but only for use of such land or building. Wherein this aspect was upheld by apex court in the matter of Chartered Accountants Association VsUOI 2000 STT 64, 7 STT 29,,115 Taxman 543, 252 ITR 53 Guj HC DB.,

This, in view of the authors is an indicator as to the interpretation which could possibly be taken up the Courts though the Supreme Court is yet to reply in respect of writ petitions lying before it and there could be questions as to the applicability of the stance of the High Court to areas outside its jurisdiction if one were to consider Article 226 of the Constitution of India. Service providers who have been charging service tax would be better off continuing to do so until the matter is finally decided by the Supreme Court.

Can Construction service credit be availed by the service provider providing renting of immovable property service?

As per circular issued by CBEC dated 04.01.2008, no credit of construction or industrial or construction service be taken by service provider providing renting of immovable property service. However the circular has overlooked the definition of input service which was wide enough to cover availment of input service credit pertaining to construction services.

One of the main drivers in taxing this category could have been the fact that in developed countries which are under a unified VAT the rents are also liable.

One saving grace is that the property should be used for business or commerce. In other words where letting out is not for business or commerce, there would be no liability.

Renting by or to a religious body has been exempted as well as renting to an educational body other than commercial training or coaching centre. Moreover, renting of vacant land would not be liable except where vacant land is given on lease or license and a building or a temporary structure is constructed for use in furtherance of business or commerce. Buildings used solely for residential purposes or for accommodation including hotels, hostels, boarding houses, tents, camping facilities etc. would also not be liable.

From the gross amount charged, deduction would be available for the property tax levied and collected by the local authorities with the calculation of deduction being on a proportionate basis under Notification 24/2007 ST dated 22.05.07 There is no deduction for interest and penalty and what is deductible is property tax paid.

Where there is a case of co-ownership, one should proceed on a reasonable basis to ascertain his respective share in the property and the basis being adopted for Income Tax assessment could possibly be followed here. However the agreements would be critical here. Even those cases where there is temporary letting out of spaces without there being an associated transfer of the right of possession and effective control over such space, to the user, is to be covered under the tax net. Thus spaces let out in malls for vending machines, cinema theatres etc, would be liable.

Management, Maintenance or Repair Services

The activities covered here would be maintenance or management of properties whether movable or immovable, maintenance or repair of goods. The activity should be under a contract or agreement unless we have maintenance or repair of goods/properties by a manufacturer in which case, an agreement would not be a pre-requisite.

Where there is transfer of property in goods during the course of provision of service, service tax would have to be paid on the labour charges alone. The service provider can therefore examine availing the benefit of notification 12/2003 ST as per which, deduction would be given for the value of materials or goods sold. The assessee in such cases would not be able to avail cenvat credit of excise duties paid on such goods and materials though the credit of service tax on input services and excise duties on capital goods would be available.

Assessees may note that the scope of this category would be very wide and most of the repair activities undertaken on goods would be liable under this category. A classic example could be that of reconditioning of goods undertaken by a manufacturer on rejection by his customer where the same does not amount to manufacture under the Central Excise Act 1944. Where the manufacturer bills the customer for the same especially when not covered by the warranty period, the same could be liable to service tax under this category.

Even maintenance of software and computer hardware would be liable under this category. With regard to software what is taxed is maintenance of computer software wherein the functionality of the modules/software is not enhanced beyond the existing capacity. The maintenance activity should be under a contract/agreement. Readers may also note that there may be cases of contracts for composite services in which case the essential nature of the service/contract would have to be determined. Where it is not one of taxable service, it could not be taxable at all. In CMS (India) Operations & Maintenance Company (P) Ltd Vs CCE Pondicherry (2007 (07) STR 369 (Tri-Chennai)), the contention of the department regarding breaking up of a operation and maintenance contract for operating and maintaining a facility for generating and supplying

electricity to TNEB was discarded by the Tribunal which held the said contract to be a works contract for manufacture of goods viz., electricity.

Assessees should be careful enough to distinguish this category of service from that of Business Auxiliary Service as what is taxed here is repair or maintenance activity and not processing of goods which would be liable under BAS. Example could be re-engraving of cylinders for printing new designs would be processing and not repair.

Whether re-treading of old tyres would tantamount to management maintenance or repair service? Presently this issue is being debated across the country, as to retreading of old tyres would amount to repair services, wherein department is issuing notices to the assessee considering the activity to be management maintenance or repair service. However the authors are of the view that the re-treading of old tyres would amount to works contract, however works contract service under service tax does not include management, maintenance or repair service, therefore the same would be out of the purview of service tax net. However this view requires judicial confirmation.

Information Technology Software Services

A review of the definition of taxable service under the new category of Information Technology Software service which has come into effect from 16.05.08 reveals that the said category seeks to levy service tax on customized software developmental activity. This has also been clarified by the department through its letter F.No. 334/1/2008 TRU dated 29.02.08., IT software whether used for business or not were liable to service tax. Most of the activities which form part of the Systems Development Lifecycle and required to develop and implement software from the conceptualization stage and up to the stage of final implementation would be covered under this category. Notification 17/2010 dated 27.02.2010 provides for exemption for service provided for packaged or canned software intended for single use subject to certain conditions mentioned therein.

As per notification 53/2010- ST, Service tax with respect to right to use canned or packed software, is exempted from service tax, provided duty of excise or customs duty was paid. Further a declaration should be obtained from the service provider, that an amount not more than retail sale price was charged from the customers.

As highlighted above even the process of acquiring the right to use information technology software for commercial exploitation including the right to reproduce or to distribute or to sell the

same has been covered by the definition under this category. Even acquisition of the right to use software components for the creation of and inclusion in other IT software products has been included. This could lead to considerable litigation in future if one were to also take into consideration the verdict given by the Supreme Court in Tata Consultancy Services Vs State of Andhra Pradesh (2004 (178) ELT 22 (SC)) where both canned and uncanned software were held to be capable of being regarded as goods. This was also reinforced by the decision of the Madras High Court in Infosys Technologies Ltd Vs CTO (2009 (233) ELT 56 (HC-Mad)) where both tangible and intangible property (including customized or non-customized software) were held to be capable of being goods if they had the required attributes to hold them as goods. If that were the case, then acquisition of the right to use software or software components whether it is canned software or uncanned software could also be held liable under the sales tax law by the concerned authorities. Here where sales tax is leviable, the assessee would have to contend that the right is with regard to goods and that the acquisition of right with regard to the same cannot be subjected to service tax.

In case of Infotech Software Dealer Association Vs UOI in 2010 (20) STR 289 (Mad), wherein the issue as to whether right to use software was goods or service was examined. The honorable high court made an observation, when a software was developed, the copyrights of the same was retained by the developer and only the right to use the same was given to many subscribers, which implies that the ownership of the software was retained by the developer only the facility to use software was given to various subscribers, therefore the said transaction was liable to service tax, in order to levy sales tax under deemed sale, right to use the goods should also be transferred, From the above it is clear that leviablity of service tax or sales tax depend upon nature of transaction.

Whether the service provider who exports IT software services abroad would be eligible to opt for refund?

One advantage of the introduction of service tax levy on IT software services has been the opening up of options available for an exporter of services. The service provider exporting IT software services in accordance with the Export of Service Rules 2005 can have the option of going in for refund of the cenvat credit under Rule 5 of Cenvat Credit Rules 2004. Another alternative could be to go in for rebate of service tax paid under Rule 5 of Export of Service Rules 2005. (Note – the service has been put under the third category i.e recipient based criterion for the purpose of determining whether the service has really been exported out of India in accordance

with the Export of Service Rules 2005 where the services are provided from India to a person residing abroad.)

Goods Transport Agency Services

This is one category which has been found to be posing problems to most of the assessees under service tax. The common perception among the assessees is that the service provider alone is liable to service tax. The assessees often overlook the provisions of section 68(2) of Chapter V of Finance Act 1994 as amended from time to time as per which a service receiver can also be held liable by the government in certain cases by issuing a notification in this regard. The notification would apply to certain categories of services rather than categories of assessees.

One of the categories with regard to which the service receiver is held liable is that of Goods Transport Agency service. Here the consignor or the consignee whoever pays the freight would be liable to service tax. But first of all, the service provider should be a GTA. I.e. a person providing services in relation to transport of goods by road and issuing a consignment note. In the opinion of the paper writers, the goods transport owner or operator who works under a contract or who bills on weekly / daily basis or is paid per trip may not be covered under this levy as per the FM speech as well as the Committee established in 2004 who opined that only booking agents would be liable. Also in the case of K.M.B. Granites P. Ltd. v Comm. of Central Excise, Salem [2010] 25 STT 141 it was held that that transport undertaken by individuals owning and operating lorry and trucks is not subject to service tax.

The liability would be on the person paying the freight is the payer happens to be any one of the following –

- Factory registered under or governed by Factories Act 1948
- Company established under Companies Act 1956
- Corporation established by or under any law
- Society registered under Societies Registration Act 1860
- Any cooperative society established by or under any law
- A dealer registered under Central Excise Act 1944
- Body corporate established or a partnership firm registered by or under any law

The person who is liable to pay the freight is liable and the person who pays on behalf of another would not be liable. Further the benefit of small service provider exemption would also not be available..

The service tax would not have to be paid on the entire amount and the payer can avail a deduction of 75% of the gross amount charged as freight. The condition as to getting the declaration as to non availment of Cenvat credits from the GTA which existed earlier has been done away with..

The liability would arise where the freight charged exceeds Rs. 750 for individual consignments and Rs. 1500 for other consignments. The intention here is not to tax freight paid to local tempo operators who do not issue a consignment note.

The payment would have to be made in cash and once payment has been made, the service tax paid can be availed as credits if the service constitutes input service to the payer. A controversy that the outward freight is not allowed has been precipitated by the bureaucrats of this country going against the concepts of Cenvat credit and movement to GST. In case of Bellary Iron and ores Pvt Ltd Vs CCE 2010 (18) STR 406 (Tri- Bang) it was held that transportation of goods by truck owners or operators was out from the scope of taxability under Goods Transport Agency Service, only the booking agents were made liable to Service Tax under Goods Transportation Services, further the activity carried out by truck owners was liable to service tax under Supply of Tangible Goods services, wherein the truck owners operated the vehicle without transferring the possession of such trucks, the said service was taxable only from 16.05.2008 and not prior to that date. Further the term road was also discussed as mentioned in Goods transportation Agency Service, wherein it was held that Road would only mean public road, and transportation by mud roads formed in the mining area could not be held to be transportation by road

Works contract service

This entry would be applicable to the following existing service providers:

- Industrial and Commercial Construction
- Construction of Complex
- Erection, installation and Commissioning

If there are works contracts which cover activities not coming under the ones specified above, they would have to be taxed under other existing heads and consequently, the composition benefit in such cases would not be available. In such a scenario, the existing notifications such as 12/2003 ST and 1/2006 ST would have to be relied upon to get any deduction.

For pure labour services where there is no material involved the service would continue to be covered under the above categories as the definition of works contract makes it clear *as to the requirement of transfer of property in goods for a contract to be liable under this category*.

Whether joint development liable?

Under the Joint Development Agreement, the builder delivers the share to the land owner in exchange for land while retaining his own share. What is the implication under service tax on the constructed portion shared with the land owner?

The CESTAT in the case of Purvankara Projects Ltd Vs CST Bangalore (2010-TIOL-28-CESTAT-Bang-Stay) where in the context of construction of flats and transferring them to land owners who are co-developers it was held that in exchange for land received from them it cannot be held to be any service. A prima facie view was that there is no service involved in the transaction. It may be noted that the final ruling of the Tribunal in this regard is awaited.

The service tax liability is attracted on the value of taxable services. There was an explanation inserted to the taxable service definition in construction services, wef 1.7.2010 which sought to tax the **sums received** prior to grant of completion certificate by builder was levied to service tax. However, what was sought to be covered by this deeming fiction was sums of money received by the builder from the buyer as advances. In view of paperwriters it cannot be extended to cover the land/development rights which is not a sum.

As per erstwhile Section 66[presently 66B] (which was charging section prior to 1.7.2012) read with Section 67 it levies tax on the **value of taxable services** where provision of service is for a **consideration**. As per explanation below section 67, *Explanation-For the purposes of this section(a) "consideration" includes **any amount that is payable** for the taxable services provided or to be provided;*

However demands could be made by revenue citing Circular No.151/2012-ST issued in February, 2012. Board Circular No. 151/2/2012-S.T., dated 10-2-2012 clarifies on taxability as under:

Two different identifiable transactions:

- (a) sale of land by the landowner which is not a taxable service; and
- (b) construction service provided by the builder/developer.

The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers:

- (a) from landowner: in the form of land/development rights; and
  taxable in case any part of the payment/development rights of the land was received by the builder/ developer before the issuance of completion

certificate and the service tax would be required to be paid by builder/developers even for the flats given to the land owner.

- (b) from other buyers: normally in cash.

The circular clarifies on valuation of land owners share as follows-

a. The value of these flats would be equal to the value of similar flats charged by the builder/developer from the end buyers for cash.
b. In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which development rights given to develop the land could be used for arriving at the taxable value.

Though there is a possibility of challenge to service tax on land owners share, there could be a demand of service tax on land owner's share of constructed area by revenue as the law stands presently after 1.7.2012. Though there is a difference of views, if the buyers are aware and willing to pay the service tax and therefore when in doubt it maybe preferable to collect and pay the service tax.

One thing the assessees have to analyse is whether there exists a service provider who provides the works contract service and a service receiver who receives such service. In the absence of such service, there would not be a liability under service tax. Sometimes, the construction activity may not be undertaken on behalf of a client/customer but may be undertaken by the builder/developer on his own account and the constructed property sold to buyers. In such situations, there would be no liability under service tax as there is no distinct service provider and service receiver and the builder/developer cannot provide service to himself. This has also been decided by the Gauhati High Court in Magus Construction (P) Ltd Vs UOI (2008 (11) STR 225 (Gau)).

At same time, wef 1.7.2010 where any part of sums received by builder before completion certificate, it is liable to service tax.

The assessees are advised to be careful even where partly constructed property plus land is transferred to prospective buyers and then the remainder of construction work undertaken on their behalf as the entire amount involved in the project would not be liable to service tax because of the land and partly built up unit being sold/transferred to the buyers and then works contract

service in relation to construction being provided. Due care is to be taken to ensure that the agreements are properly drawn up to indicate the various components and the amounts being charged for the same.

Composition Scheme

Works contract (Composition Scheme for Payment of Service Tax) Rules 2007 has been notified vide notification 32/2007 ST dated 22.05.2007 by the Central Government for the purpose of specifying the scheme for composition. The person executing works contract has the option to pay tax under the composition scheme at the rate of four percent (rate changed from earlier rate of 2% by notification 7/2008 ST wef 01.03.2008) on the gross amount charged for the works contract. Gross amount shall not include the VAT or sales tax paid on the goods transferred during the execution of such works contract but shall include the value of all goods used in or in relation the works contract whether supplied under any the contract for a consideration or otherwise and all services used for execution of the works contract (notification 23/2009 dated 07.07.2009). The option is to be exercised prior to payment of service tax in respect of the said works contract and once exercised, shall be in force till the completion of the works contract.

Exemption

Services in relation to execution of works contract provided by any person to any other person in relation to construction of ports or other ports has been exempted from service tax. This exemption shall not extend to services of completion, finishing, repair, alteration, renovation, restoration, maintenance or repair.

Valuation

A new Rule 2A has been inserted by notification 29/2007 ST dated 22.05.2007, which prescribes the valuation method in case of works contract service. The value of works contract service shall be equivalent to the gross amount charged for works contract less the value of goods transferred in respect of which VAT/sales tax has been paid, during the course of execution of works contract. The gross amount shall not include the VAT and sales tax paid on the goods transferred. The service provider shall ensure that the value of works contract service as aforesaid shall include the following –

- Labour charges for execution of the works
- Amount paid to a sub-contractor for labour and services
- Charges for planning, designing and architect's fees

- Charges for obtaining on hire or otherwise, machinery and tools used for execution of the works contract
- Cost of consumables such as water, electricity, fuel used in the execution of the works contract
- Cost of establishment of the contractor relatable to supply of labour and services
- Other similar expenses relatable to supply of labour and services and
- Profit earned by the service provider relatable to supply of labour and services

Cenvat credit

Where the service provider opts for the composition scheme for the purpose of payment of service tax, he shall not take cenvat credit of duty and cess paid on inputs used in relation to such works contract. However the credit on capital goods used for providing the service as well as the input service credit (sub contractors, insurance, telephone, manpower supply, architect, security, supply of tangible goods, etc) would be available.

Where the service provider does not opt for composition scheme, he should be entitled to cenvat credit on inputs, input services and capital goods used in execution of such works contract.

In case of Sunil Hi-Tech Engineerings Ltd Vs CCE, (2010 (17) STR 121 (Tri- Mumbai) it was held that prior to introduction of Works Contract service, the assessee was liable to service tax under construction service, however with respect to value of material on which sale tax was paid, the assessee could claim the benefit of notification 12/2003.

It was held that when assessee had paid service tax under construction service prior to introduction of works contract service. Therefore the plea of estoppel in tax matters and tax liability can be disowned However there are contrary decision wherein it was held that no tax was payable, if the activity carried out by the assessee was a works contract service, prior to introduction of Works Contract Service.

However in case of CCE Vs BSBK decision Pvt Ltd, 2010 (253) ELT 522 (Tri Del - LB) it was held that composite contracts would be divisible, once the value of material was established, the balance would be value of labour and the same would be liable to service tax. On the basis of this decision, Daelim Industries case where it was held that composite contract were not vivisectable, was referred to larger bench of Supreme Court.

1. **Possible Issues: Whether the levy of service tax on works contracts is constitutionally valid?**

   Comments: The Union Government has a right under Entry 97 of List I of Seventh Schedule to levy a tax on a subject, which is not specifically covered under List II or List III of ibid. The transaction of Works Contract is neither a sale nor a service as held by the Supreme Court in case of Gannon Dunkerly. The amended definition of sale of goods as per the constitution covers only the transfer of goods in the course of execution of works contract. Therefore the service element is not a subject matter of levy either under List II or List III. Therefore in the opinion of the authors the same would be well within the powers of the Union Government to levy tax. However another view in the industry is that there is no facility under the constitution to vivisect a single transaction and tax the portion of the same.

2. **Whether the works contractor can continue under the existing entries for ongoing contracts?**

   Comments: Since there is a new entry it is presumed that service providers may have to choose considering the principles of Section 65A on classification. However if they do not transfer any materials they would continue under construction or erection categories. Herein it is important to note that the department letter F.No. B1/16/2007 TRU dated 22.05.2007 goes on to say that contracts which are treated as works contract for levying VAT/sales tax shall also be treated as works contract for levying service tax. However, this letter would have to be seen in the light of the explanation to section 65(105)(zzzza), which deals with the contracts which can be regarded as works contract under this category.

3. **Whether the works contracts involving materials in progress can also opt for the new entry though earlier they were registered under the old entries?**

   Comments: Assessees may note that the department had come out with circular 98/1/2008 ST dated 04.01.2008 which clarified that where service providers had classified their services under other categories viz., erection, commissioning or commercial or industrial construction or construction of complexes, they could not reclassify the single composite service under works contract. This circular also emphasized the fact that a works contract could not be vivisected and that the same was not legally sustainable. The said circular was issued after the decision in case of Nagarjuna Construction Co. Ltd. Vs. Government of India [2012-TIOL-107-SC-ST] where Supreme Court held that in respect of works contract, where service tax had already been paid, no option to pay service tax under the Works Contract Composition Scheme can be exercised. Assessee who wants to avail of benefit of payment of service

tax as per Composition Scheme Rules must opt to so do before making payment of service tax in respect of said works contract. Option so exercised would apply to entire works contract, and assessee is not permitted to change option till said works contract is completed.

4. **Whether the option of availing the credit on all the inputs (cement, steel, glazing, tiles etc) and paying the service tax on the gross amount is still available?**

   Comments: The composition scheme is optional and the works contractor can even pay service tax on a value arrived at as aforesaid at the normal rate. The law as it stands today is silent regarding the cenvat credit on inputs in such a scenario as the credit has been expressly barred only in case of an assessee opting for composition scheme. The assessee can as per the humble view of the authors, pay service tax on the gross amount for the service which should include the value of materials transferred if they are to avail Cenvat credit of the excise duties on the materials used for the construction work/works contract service. This could enable the contractor to bring down his construction costs and the benefit of such reduced costs, can be passed on to his buyer.

5. **Whether the option chosen under VAT law has any bearing for the classification or valuation under this new entry?**

   Comments: The WC option provides for the option of deducting the value on which VAT has been paid and on the balance the service tax would be leviable. This option if chosen would require that the regular scheme under VAT has been opted for. However for the composition scheme the method under VAT is not relevant.

6. **Whether the service providers under the specified categories were not liable for works contracts earlier to this entry?**

   Comments: The entry read with the Finance Minister's Speech along with department circular indicates that works contracts were not earlier covered. The purpose for which this entry was bought in also is favorable to this interpretation. Therefore it can be construed that there was no liability earlier. This could lead to a situation where the service provider who has paid the service tax from their pockets (not recovered from the customers) could go for a refund especially if the same was done in pursuance of an investigation.

7. **Whether the sub contractors would be exempt as the main contractor is paying the service tax?**

   Comments: The sub contractors would also have to discharge the ST under works contract or other categories and would be liable for the tax unless they are below Rs. 10 Lakhs.

8. **Whether the deeming fiction of service tax with respect to any amount received by the builder from its customer before grant of certificate of completion would be liable for service tax under works contract?**

   Comments: The author is of the opinion that the said explanation is provided under section 65(105)(zzq) i.e. (Construction services only) and the said explanation is not provided under section 65(105)(zzzza) i.e. works contract services. Therefore the said deeming fiction would not apply to works contract service.

Finance Bill 2011 has restricted cenvat credit to an extent of 60%, when the service is received from service receivers providing services classifiable under construction of residential complex service, Commercial and industrial construction service and erection, commissioning and installation services, who had opted to pay service tax on gross amount including the value of inputs.

Supply of tangible goods for use service

As per Section 65(105)(zzzzj) of Chapter V of Finance Act as amended, taxable service means any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances. Thus if one purely goes by the definition, it may also be possible to argue that what is liable is service in relation to supply of tangible goods without transferring right of possession and effective control of such machinery and not the supply itself.

Concept of tangible goods

The term "tangible goods" has not been defined under the Finance Act and one would have to refer the definition of "Goods" as per Sale of Goods Act. Here, it has been defined to mean every kind of movable property other than actionable claims and money; and including stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed

to be severed before sale or under the contract of sale. Goods should thus be movable property capable of being bought and sold and capable of being transmitted, transferred, delivered, stored and possessed. Immovable property is not being taxed under this category and would have to be examined under the category Renting of Immovable Property service under service tax.

The term "tangible" would have to be seen in light of the meaning assigned by English Dictionary. As per Random House Webster's Unabridged Dictionary, tangible means capable of being touched or discernible by the touch. The goods being supplied should be tangible goods i.e. having physical existence and form, in order to attract liability under this category.

Concept of supply, control etc

The term "supply" means to furnish or provide (a person, establishment or place etc) with what is lacking or requisite. The word supply need not necessarily indicate transfer of the right of possession or effective control over the goods/materials in question.

The term "transfer" means "to make over the possession or control of" or "to convey or remove from one place, person to another".

The term "possession" has been defined as "actual holding or occupancy, either with or without rights of ownership".

The term "control" has been defined as "to exercise restraint or direction over; dominate, regulate, or command."

In order to make a transaction of supply of tangible goods not liable under this category, there should be a transfer of both possession as well as effective control over the said goods, to the user. The presumption here seems to be that VAT/sales tax is levied in cases where both right of possession as well as effective control over the goods is transferred to the user. The risk and reward of ownership would lie with the person who enjoys the possession.

Concept of deemed sale

In this regard, it would be interesting to go through Article 366(29A) of the Constitution of India as well as the decision of the Supreme Court in Bharat Sanchar Nigam Ltd and Another Vs Union of India and Others (2006-TIOL-15-SC-CT-LB) wherein the concept of sale, deemed sale and the powers of the states to levy sales tax on deemed sales had been discussed in detail in light of the 46th amendment to our Constitution. Article 366(29A) after the said amendment, goes thus – "tax on the sale or purchase of goods" includes –

- a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- a tax on the delivery of goods on hire-purchase or any system of payment by installments;
- a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- a tax on the supply of goods by any unincorporated association or body of person to a member thereof for cash, deferred payment or other valuable consideration;
- a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration;

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made.

The Supreme Court in the aforesaid case (BSNL Vs UOI) had reiterated that the sale element in those contracts not falling under the aforesaid six clauses would be taxed depending on the substance of the contract (i.e. applying dominant nature test). Here, the intention of the parties entering into the particular transaction of sale would be important. However, in cases where the contract falls under any of the six categories specified above under Article 366(29A) of the Constitution of India, the dominant nature test need not apply and the sale element of those contracts can be subjected to sales tax by the concerned state even if one or more of the ingredients for sale as specified by Section 4 of Sale of Goods Act 1930 are absent. Thus one would have to examine the nature of transactions that one intends to bring under this category of service as the same would also have to be seen from the sales tax/VAT angle to know the overall liability for the assessee.

The departmental letter talks about certain cases where both, right as to possession and effective control may not be transferred to the user. These could cover the present practice of hiring of excavators, wheel loaders, dump trucks, crawler carriers, compaction equipment, cranes, offshore

construction vessels and barges, geotechnical vessels, tug and barge flotillas, rigs, airplanes and high value machineries. There may however, be cases where hiring of equipment involves exercising of control over such equipment albeit temporarily, by the user without physically operating the same. In such a scenario, the transaction would be liable under service tax. Here, there is a danger of the transaction inviting scrutiny of the LVO as well.

Assessees may here note that transfer of right to use goods for any purpose falls under clause (d) of Article 366(29A) of Constitution of India which can be subjected to sales tax by the concerned states as a deemed sale. Here, the right in question is legal right to use goods. As discussed in BSNL Vs UOI case, to constitute a transaction for the transfer of the right to use the goods the transaction must have the following attributes –

- There must be goods available for delivery
- There must be consensus *ad idem* as to the identity of the goods
- The transferee should have a legal right to use the goods – consequently all legal consequences of such use including any permissions or licenses required therefore should be available to the transferee
- For the period during which the transferee has such legal right, it has to be to the exclusion of the transferor
- Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others

Where the aforesaid criteria are satisfied in a transaction, the same would fall under clause (d) of Article 366(29A) of Constitution of India and would attract sales tax. When the transaction is subject to sales tax, the same cannot be subject to service tax. Even where the transaction is one of hiring, the question of levying sales tax/VAT would arise where full possession and control is given to the hirer/user as per the decision rendered in Rashtriya Ispat Nigam Vs State of Andhra Pradesh (2002-TIOL-560-SC-CT).

Exemptions

The supply of goods carriage to a Goods Transport Agency for carriage of goods by road liable under GTA service, without transferring the right as to possession and effective control, has been exempted under notification 1/2009 ST. The usage of the vehicle should be by the said GTA.

Benefits – Cenvat Credits

The service provider is entitled to claim cenvat credits on the input services used for providing such taxable service, in the opinion of the authors. Input services could be in the nature of manpower recruitment and supply services, authorized service station services, security services etc. The credit of excise duty on capital goods would also be admissible where the equipments are procured by the assessee/service provider from a manufacturer or a dealer registered under Central Excise and then supplied to the user. However, the goods in question should not fall under the category of motor vehicles as credit would not be available on them. Credits would also be admissible in terms of the excise duty on the spares.

Whether the Lorries owned by mine owners/ GTO would be eligible to avail capital goods credit on such lorries?

As the definition of capital goods under Cenvat credit rules, provides eligibility of credit with respect to motor vehicles only for specified services, wherein such specified service include Site formation service and mining services, therefore the said credits would be admissible with respect to capital goods credits on such lorries.

In case of Indian National Ship-owners Association Vs UOI 2009 (14) STR 289 (HC Bom), had held that, when vessel was given on time charter basis without parting the right of possession and effective control, wherein such vessel was used either pre-mining or post mining, such activity would not be construed as service in relation to mining, but would be considered as service of supply of tangible goods service and the same was taxable only from 16.05.2008 and not prior to 16.05.2008.

Construction of complexes

Section 65(91a) defines "residential complex" to mean any complex comprising of -

(a) A building or buildings, having more than 12 residential units;

(b) A common area; and

(c) Any one or more of facilities or services ***such as*** park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force,

but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for **personal use** as residence by such person.

Further an explanation is added to the construction of complex service definition vide the Finance Bill, 2010 in section 65(105)(zzzh) which states that where the complex is intended for sale, wholly or partly, then any sum received from the prospective buyer by the builder, before, during or after construction; before the grant of the completion certificate by the competent authority would be deemed to be service provided and hence taxable.

It may be pointed out that in a recent judgement passed by the Mumbai High Court in the case of Maharashtra Chamber of Housing Industry and Others vs. Union of India [012-TIOL-78-HC-Mum-ST] has upheld the Constitutional validity of levy of service tax, under clauses (zzzh) and (zzzzu) of section 65, on construction services provided by a builder. The fact that the activity in question is an activity which is rendered on land does not make the tax a taxon land..

There are two explanations to this clause which are as follows –

(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

(b) "residential unit" means a single house or a single apartment intended for use as a place of residence

Thus, in order to be regarded as a residential complex, a complex should have more than 12 residential units. Where this condition is not satisfied, there cannot be a liability under this heading. Readers may note that the definition of "residential complex" given above would hold good even under works contract category. Thus where the service of construction of complex is involved with transfer of property in goods during such execution, the said complex is required to have more than 12 residential units in the absence of which, the said service would not be liable even under works contract service.

The term "complex" has not been defined and if one refers Random House Webster's Unabridged Dictionary, "complex" has been defined to be composing of many interconnected parts.

Service provider-service receiver relationship

Circular No. 96/7/2007 ST dated 23.08.2007 talks about the importance of service provider and service receiver relationship existing in order to attract liability under service tax. This circular clears doubts about liability when the builder/developer himself constructs the residential complex. When the construction work is not taken up by another contractor and the

builder/developer/promoter himself undertakes the same, there is no service provider-service receiver relationship and the services are in the nature of self supply and hence not liable to service tax.

Whether sub-contractor liable?

The aforesaid circular also clarifies the liability of the sub-contractor who provides taxable service in relation to construction of residential complex (i.e. complex having more than 12 residential units). Where the builder/developer/promoter appoints a contractor for carrying out the construction work, such contractor would be liable to service tax. The liability would be on the gross amount for the taxable service. The circular also goes on to clarify that wherever a portion of the work is sub-contracted and the sub-contractor provides taxable service, he would be liable to pay service tax.

In Magus Construction Pvt. Ltd. Vs UOI (2008 (11) STR 225 (Gau.)), the High Court held that where the flats/premises were constructed and then transferred to the buyers/customers under a sale agreement on completion of construction and the agreements had been relied on by the registering authorities and stamp duty levied on the basis of such agreement, the transaction was one of sale and not service and hence service tax could not be levied. This position had also been maintained earlier by the Allahabad High Court in Assotech realty Pvt. Ltd Vs State of UP (2007 (07) STR 129 (All)). However as the concept of deemed service was upheld, then views expressed in Magus Construction Pvt Ltd and Assotech Realty Pvt Ltd would not hold good.

Circular 108/02/2009 ST 29.01.2009

This circular discusses the liability where the flats/properties are transferred by the builders/promoters/developers after completion of construction by them and transfer is by executing a sale deed after receipt of full payment. Where the property is so transferred, there would not be service tax liability.

However, if the construction work is undertaken by another contractor hired by the builder / promoter / developer, then such contractor would be liable to service tax as the service provider-service receiver relationship would come into play. This has also been indicated by the circular 96/7/2007 ST stated earlier.

Another aspect which has been clarified by the circular is with regard to liability where the construction, planning and design are undertaken by the builder or promoter or developer in pursuance of a contract with the ultimate owners (being the flat owner/residents). In such a scenario, the service tax liability would not arise where the property is intended for personal use of the ultimate owner. This is an important clarification as the builder/ flat owners can now examine the option of refund where service tax had been collected from them.

Where however, a contractor is hired for construction by the developer/builder, the position for the contractor would be the same as explained earlier i.e. the contractor would be liable to service tax.

Exemption

Assessees who are liable under this heading would be entitled to the benefit of notification 1/2006 ST dated 01.03.2006 which exempts taxable service of the value of 67% of the gross amount charged from service tax. In other words, service tax would be payable on 33% of the gross amount. The assessee would have to keep couple of points in mind –

1. This exemption is not available in respect of completion and finishing services alone being provided
2. The gross amount shall have to include the value of materials and goods transferred during construction as well
3. The service provider would not be entitled to benefit of Cenvat credits on inputs, input services and capital goods used for the said service as well as benefit of notification 12/2003 ST

Assessees are also advised to be careful while opting for the benefit of this notification where the contract involves transfer of property in goods which are of high value. In such circumstances, the assessee would lose out on the credits of excise duties on construction materials as the benefit of credits can be claimed only when the service provider pays service tax at the normal rate i.e. 10.3%. This can at times prove to be a better option as the excise duties would go towards reducing the cost of materials used in construction, a benefit which can be passed on to the service receiver.

Further Finance Bill 2011 has amended wherein the service provider opting for abatement under notification 1/2006 needs to factor in the abated portion of the service for the purpose of rule 6 as exempted service.

What is the distinction between the category of works contract service and this category?

Readers may note that there are two categories which virtually cover the same set of activities though with a difference. The works contract category covers the activities specified in clauses (a), (b) and (c) in the definition of "construction of complex" given above within its scope. However, assessees would have to ensure that the service they provide is classifiable under the heading works contract service. This can happen where the service in relation to construction of complex involves transfer of property in goods during its execution. Unless there is transfer of property in goods, the same would not be classifiable under works contract.

Whether the buyers of the apartment can opt for claiming refund of service tax?

Yes, if the buyer has borne the incidence of the amount collected as service tax they can apply for the refund. The amounts paid for the past 1 year as set out in Section 11B would be clearly available. However for the period prior to that the matter may have to be litigated on the argument that the amount was not a tax at all as there was no liability under law for the same.

Whether construction of road is taxable service?

As per circular 110/04/2009 ST dated 23.2.2009, which clarifies that construction of road was not a taxable service, however maintenance of road was taxable service, under management maintenance or repair service (for the period upto 2009) As per the authors view even maintenance of roads should not be taxed, as the law specifically mentions services in respect of road, airports, railways, transport terminals, bridges, dams and tunnels were not taxable. When service in respect of road was not taxable, how can a circular be issued by CBEC taxing maintenance of road. Therefore the circular was conflicting with the provision of law, as held by HC of P&H in case of CCE Vs Dr. Lal Path Lab (P) ltd, when there is specific entry for an item in the tax code with respect to exemption, the same cannot be taxed under any other entry. Further in case of CCE vs Ratan Melting And Wire industries, it was held that any circular which was issued in contrary to law are invalid in law.

Special Service by Builder

This service intends to cover the charges collected by the builder from the prospective buyer for providing preferential location or for the development of residential complex, or a commercial complex. This service does not include the service provided in relation to Repairs, Management or Maintenance, commercial or industrial construction, construction of complex and in relation to parking place.

Explanation defines ‘‘preferential location to mean to have any location having extra advantage which attracts extra payment over and above the basic sale price. The definition is very wide to cover the development of commercial or residential complex. However the TRU circular has clarified that scope of tax under this service to be internal or external development charges which are collected for

a. developing/maintaining parks,
b. laying of sewerage and water pipelines,
c. providing access roads and common lighting etc;
d. fire-fighting installation charges;
e. power back up charges etc

Hence any amount collected by the builder in this respect will not get taxed prior to the introduction of this service.

TRU circular also clarifies Development charges, to the extent they are paid to State Government or local bodies, will be would be excluded from the taxable value levy, however the notification for the same is not in place as of now.

It is expected that many issues on valuation would arise as to what is the premium for location part as contract entered at different times with different persons would be driven by business considerations which are difficult to differentiate. Under central excise where such disputes abounded earlier, the final decision was that different prices to different person/ same person at different times is valid.

Business Auxiliary Service

Business auxiliary service is perhaps one of the most important services liable to service tax. This is one category which should be noted by manufacturers under Central Excise as well. The activities liable here would be production, processing of goods for or on behalf of client, provision of services on behalf of client, promoting or marketing the service/goods of client, customer care service on behalf of client, procurement of goods or services which are inputs for the client plus a service incidental or auxiliary to services covered above. Production or processing would not cover activities amounting to manufacture of excisable goods, as per Central Excise Act 1944.

Thus where one provides services on behalf of another party or production is done for a client, the same would be liable to service tax here. With regard to production or processing of goods undertaken there is a notification (8/2005 ST) which provides an exemption from service tax

where the goods so processed or produced are used in subsequent manufacturing of dutiable goods by the client. This would basically provide relief to job workers who undertake processing of goods, which does not amount to manufacture as per Central Excise law.
There has been litigation related to job worker availing credits at same time taking benefit of exemption in notification 8/2005-ST when principal manufacturer pays excise duty on clearance of final products. While definitive decision in this regards is awaited erring on side of caution job worker could under protest reverse such credits availed.

Many of the services provided by BPO industry would be falling under this category as services are provided to third parties on behalf of the client.
One of the activities liable here is that of procurement of goods and services, which are inputs for the client. This service has to be distinguished from the services of a clearing and forwarding agent. The C&F agency services also include the services provided by a consignment agent. While commission agents would be liable under BAS, consignment agents would be liable under C&F agent's services. While both commission agent and consignment agent are agents, there are differences between the scope of their activities and their relationship with the principal as well as their dealings with third parties concerned.

The commission agent can either act on behalf of the principal in his dealings with third parties or act in his own name and deals with goods or services or documents of title to such goods or services, collects payment of sale price of such goods and services, guarantees for collection of payment for such goods and services, undertakes activities in relation to sale or purchase of such goods or services. The scope of consignment agent's work is narrower as compared to that of a commission agent and may be restricted to mere handling of goods or taking custody on a temporary basis for facilitating either storage or movement of goods. There may be cases where a consignment agent also acts as a commission agent in which case, the classification would have to be done keeping in mind the essential characteristics of the agreement.

Business Auxiliary service provided by the Indian New agency is exempted from service tax provided such Indian News Agency was exempted from service tax u/s 10(22B) of Income Tax Act, and such income was not distributed in any manner to its members.

In case of Blue Star Ltd Vs CCE, 2008, (11) STR 23 (Tri- Bang) had held that, booking of orders for foreign principal by its Indian counterpart, on the basis of such order, the foreign principle

supplies the goods to the customer in India and Indian counterpart received commission in convertible foreign exchange, was held as service exported in terms of rule 3(2) of Export of Service, Rules, 2005. Subsequently following same principal stay was granted in case of IBM India (P) Ltd, However there also exists a contrary decision in case of Microsoft Corpn (I)(P) Ltd Vs CST 2009 (15) STR 680 (Tri- Del), the said decision was also affirmed by Delhi High Court.

In 2011-TIOL-1508-CESTAT-DEL considering the two different views of the Members of the bench of the Tribunal this matter has now been referred to third member by CESTAT to determine whether Service provided to Principal situated in Singapore to market products in India is Export of service or service provided in India. Since the issue is pending, we may have to wait for a final decision for FINAL clarity to emerge in this regards.

Support services of business or commerce

The term "business" has not been defined for the purposes of this clause and one would have to go by the meaning assigned by a standard dictionary. As per Random House Webster's Dictionary, the term "business" means an occupation, profession or trade. "Commerce" has been defined as an interchange of goods or commodities between different countries or between areas of the same country. Thus in order to render the service provided liable to service tax as a taxable service under this clause, the service should be one which supports the service receiver's business or commerce. Where the service cannot be related to his business or commerce, the service provided, in our view, cannot be brought under this heading.

For the purposes of this clause, "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security. The term "infrastructure" has been defined by Random House Webster's Dictionary as the basic underlying framework or features of a system or organisation.

Finance Bill 2011 has replaced the words operational assistance for marketing with operational or administrative assistance in any manner.

Here operational or administrative assistance would cover all support activates for others on a contract or fee, that are ongoing business support function that the business or organization commonly do for themselves but sometimes find it economical to outsource.

BAS Vs BSS

Assessees should note the distinction between the two categories being discussed here. Compared to the Business Support Service category, the category of Business Auxiliary Service is more specific seeking to tax specified activities/services. There can be confusion at times where the services provided are those such as billing, issue or collection or recovery of cheques, payments or maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relations service, management or supervision as these too are services in relation to business or commerce. But one essential difference between the two categories being discussed here is that while business support service seeks to tax outsourced service in relation to business or commerce, business auxiliary service would apply to those services which are ***incidental or auxiliary*** to services of promotion or marketing of goods or service provided by client, customer care service provided on behalf of the client, procurement of goods or services which are inputs for the client, production or processing of goods for or on behalf of the client or provision of service on behalf of the client.

One should also see whether services are provided to a client or on behalf of the client to a third party. Where the services covered here are provided on behalf of the client to a third party, the same would be liable under business auxiliary service as services provided on behalf of the client.

BSS Vs Renting of Immovable property service

Business Support Service also includes infrastructural support services within its purview. At the same time assessees should note the presence of another service category and that is renting of immovable property service which was amended recently to include the service of letting out space temporarily. Where space is let out temporarily without transferring the right as to ownership and control over such space to the service receiver, the same would be liable under the category renting of immovable property. Now a situation can arise say, where space is provided in an office to an entity to either set up its counter for promoting its business/service or even a help desk to assist the employees of the organisation. In such a scenario one would have to scan the agreement if it is available, to understand the exact nature of service involved. In order to tax the service under BSS, the setting up of the counter or help desk should qualify as a service which would support or supports the organisation's business or commerce. Sometimes answering this question could prove to be tricky where the service may not support the organisation's business directly though it may help its employees as in case of the help desk mentioned above.

The possible way to distinguish between BSS and renting of immovable property service is that, when a portion of space in office along with personnel is provided along with infrastructure support for a consolidated amount would fall within the preview of BSS. In case were merely

space was provided, Where the tenant himself installs infrastructure facility like telephone connection, internet etc would fall within the purview of renting of immovable property service.

BSS Vs Consulting Engineer Service Vs Business & Management Consultancy

Sometimes advice as well as services which support service receiver's business, may be provided by the service provider. In such cases, the service agreements would have to be reviewed to see whether the service is really a composite one or the services involved can be identified separately. In case of composite services, the service would be classified on the basis of the service which gives it the essential character. Here it would be worthwhile to note the circumstances under which advice, consultancy or technical assistance can fall under consulting engineer's category. Such advice, consultancy or technical assistance should be provided by a consulting engineer i.e. professionally qualified engineer or a body corporate or firm providing such service, in one or more disciplines of engineering.

Sometimes we may also have a scenario where advice in relation to management is given by the service provider. In that case, we would have to look at another taxable service namely, management or business consultant's service. Once again in case of composite service involving advice as well as services supporting business, the classification would have to be on the basis of the service which gives the same its essential character. Here one would have to distinguish between services in relation to management and those which merely support the business. Services which enable the service receiver to effectively manage or organise his business can be said to fall under management or business consultant's service.

BSS Vs Mailing List compilation and Mailing Services

Assessees should note that where the services are provided in relation to mailing list compilation and mailing, the said service would have to be seen in light of the taxable service of mailing list compilation and mailing service. For this, the assessee would have to analyse whether the service is one of pure mailing or whether it is part of a larger bouquet of services. In case of the latter, the classification would have to be done as explained earlier i.e. using the essential character test. Where the service is only in relation to compiling and providing list of name and address and any other information from any source or merely sending document, information, goods or any other material in a packet by whatever name called, by addressing, stuffing, sealing, metering or mailing, the same would be classifiable under mailing list compilation and mailing service.

BSS Vs Development and Supply of Content

The activity of telemarketing i.e. selling or advertising over telephone would be liable under BSS. However there can be a scenario where a service provider develops the content for such advertising and then takes up the activity of telemarketing as well. When the essential character of the service or arrangement is one of telemarketing, the same would be liable under BSS in our view. But where the service is essentially one of development and supply of content, the same would have to be seen under another heading. Services in relation to development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services would be taxed under the separate heading development and supply of content service.

BSS Vs Manpower Recruitment or Supply agency's service

Another aspect which merits attention is the manner in which support services of business or commerce are obtained. The analysis of Service level Agreements along with the Statement of Work (for examining what are the deliverables) in most of the cases where processes are outsourced, would assume significance as there have been cases where the agreements were essentially for supply of manpower though the activities undertaken were intended to support the service receiver's business. Where the agreement is one for supply of manpower where the personnel continue to be the service provider's employees but work on support services to service receiver's business under receivers supervision would be liable under manpower recruitment or supply agency's service. In this case the service is merely of supplying people with the requisite skill / qualifications. Such supply may be temporary or otherwise. This would have some implications as manpower recruitment or supply agency's services has been in existence for quite sometime now though BSS was introduced only with effect from 01.05.06.

BSS Vs On-line information and Database Access and/or Retrieval service

Support services of business or commerce may also involve usage of computer network by the service provider, for the purpose of sending/receiving information to/from the service receiver. As per the views of the paper writers, one would have to see whether such usage of computer network is only incidental to carrying out the support services for business or commerce. This would have to be evident from a reading of the agreement. Where the main intention is to carry out the activities laid down under this category, it should be possible to hold the service provided as liable under business support service though revenue may try to classify the same under on-line information and data base access or retrieval service.

Sale of goods

Service providers may at times end up transferring property in goods during the course of providing taxable service. Where this happens, the benefit of notification 12/2003 ST which provides an abatement for the value of goods and materials sold, can be availed by the service provider where he charges VAT/CST on the value such goods sold.

In SR Kalyanakrishnan & Sree Krishna Mandiram Vs CCE Cochin (2007-TIOL-1914-CESTAT-Bang), the service of verification of correctness, fairness and authenticity of information furnished by those seeking loan from ICICI bank was distinguished from activity of promoting the client's business and held to be liable under Business Support Service and taxable from 01.05.06 and not under Business Auxiliary Service and therefore not taxed for the service provided prior to 01.05.06

In Jaded Siddappa & Co Vs CCE Mangalore (2007 (09) LCX 0201 Tri-Bang), the activity of outsourcing of meter reading, billing and ledger posting was held not to fall within the ambit of professional activity of Chartered Accountants and was held to be classifiable under business support service. Thus, in other words, just because support services happen to be provided by professionals, the same would not be assessable as a professional service unless the professional is really called upon to bring in his professional expertise in carrying out or performing the service.

In case of Agarwal Colour Advance Photo System Vs CCE 2010 (19) STR 181 (Tri-Del), it was held that when the contract was for provision of service, divisibility of service and goods component unwarranted, as the contract was not for sale of goods but used for provision of service, therefore the deduction towards material under notification 12/2003 was not unwarranted. Further it was held that the judgment in case of Shilpi Color Labs was required to be re-considered. Therefore the said matter was referred to larger bench for re-consideration.

Interior decorator

It may be seen from the definitions that the interior decorator may be any person including an individual and need not be a firm/corporate assessee. The interior decorator should be providing the services of planning, designing or beautification of spaces and this service may be by way of advice, consultancy, technical assistance or may also be provided in any other manner. Landscape designers have also been made liable under this category even though the services they render is generally outdoor in nature.

In order to tax the service under this head, the presence of advice, consultancy or technical assistance is a requirement and in the absence of these requirements, the liability cannot be under

this head. In this regard, the advisory function as is covered here should be distinguished from the function of execution. Where an assessee executes the task of beautification of spaces or landscaping on the basis of the advice of a consultant, he would not be liable and the liability would be on the consultant for providing such advice.

Whether Vaastu / Feng Shui consultants liable?

These consultants normally offer advisory services in relation to planning, designing or beautification of spaces and therefore would be liable under this category.

Whether sub contractor liable?

Yes. Post 23.08.07, even sub contractors are required to pay the service tax and the principal is to avail the credit at his option, on the service tax paid.

Value for service tax

The interior decorator may wherever possible, try to bifurcate the contract into one of advice and one of supply and execution/supply of materials. This would enable him to identify the charges towards advice which can then be taxed under the interior decorator category with supply of materials suffering VAT/CST as this would reduce the scope for litigation. The interior decorator in such a case would be entitled to benefit of notification 12/2003 ST with regard to sale of materials subject to payment of VAT/CST.

Renting of cabs

The service provider may be any person engaged in renting of motor cab, maxi cab or motor vehicle as put down in the definition explained above. Thus even an individual would be liable if he is engaged in renting of cabs. As per the clarification given by the Chief Commissioner of Central Excise Coimbatore, rent a cab does not cover metered taxis or radio taxis used for transportation from one place to another, as they are not rented as such for a period of time.

It is worthwhile to note here that the definition of rent a cab operator had been amended in 1998 and till such time the levy was only on a person who held a license under the Rent a cab scheme 1989 framed by the central government under Motor Vehicles Act 1988. Consequently, persons having a minimum of 50 cabs alone were taxed as such persons alone were given licenses.

With effect from 01.06.07 the clause relating to motor vehicles carrying more than twelve persons was inserted to expand the scope of levy under this category. At the same time, a relaxation has been introduced by way of exclusion of renting of maxi cabs and motor vehicles by an educational body. Educational body for this purpose shall not include commercial training or coaching center. Thus with effect from 01.06.07 while renting out of motor vehicles other than

motor cabs and maxi cabs would be liable, renting of maxi cabs and motor vehicles (designed to carry more than twelve passengers excluding the driver) by educational bodies would be exempt.

Ownership of vehicles not the criteria for charging service tax

As decided in Transport Solution Group Vs. CCE Mumbai ((2006) 1 STR (309) – Tr—Mumbai) case, the service provider would be liable even if he does not own the motor vehicles. However where he does not own the motor vehicles, credit on such vehicles as capital goods might not be available as the definition of capital goods under Cenvat Credit Rules 2004 requires vehicles to be registered in the name of the service provider.

Whether transport of employees from office is liable or is to be distinguished?

It is interesting to note that the decisions given by the Tribunals have led to considerable confusion in this regard. In Shiva Travels Vs. CCE, Meerut case ((2006) (4) STR (588) (Tri-Del)), the assessee was held liable even though he tried to argue that the possession of the vehicle had not been transferred to the client and that his own driver was in control of the vehicle/cab. This decision was also followed in Sonia Travels Vs. CCE Jaipur, case.

However in Kuldip Singh Gill Vs. CCE, Jalandhar ((2006) (3) STR 689 (Tri-Del)) case, the Tribunal sought to distinguish between renting of cabs and hiring of cabs for transportation under a contract where the vehicles were not leased to the client for use at his discretion. In this case, only renting of cabs was held liable and not all manner of transport or vehicle hire services. As per the discussion held under this case, where the vehicles are not rented or leased for use by the client at his discretion, service tax need not be levied. The same stance was also adopted by the Ahmedabad Tribunal in Dharmabhakti Travels Vs. CCE, Rajkot case.

In Surya Tours and Travels Vs CCE Jaipur II (2008-TIOL-2035-CESTAT-DEL), the activity of providing a cab on hire on per-kilometer basis by providing driver and retaining control of vehicle, was held not to be liable to service tax.

Mere hiring of cabs could be liable under supply of tangible goods for use service, and that too, if one were to strictly follow the said category without question the levy.

Readers are also advised to refer chapter on exemptions for the exemptions on this category.

Tour operator's service

The service provider is required to be a tour operator. Where the service provider holds a tourist permit granted under the Motor Vehicles Act 1988, he shall automatically be covered under the definition of tour operator. One may note that the earlier definition of tour operator had been

amended in 2004 to expand the scope of the category by including transport by any mode as being liable rather than the earlier concept of operating tours in a tourist vehicle (as per Motor Vehicles Act 1988) alone being liable.

What is liable is not just package tour but even mere booking or arranging of accommodation by the tour operator as well as other services provided in relation to a tour by the tour operator. Services provided in relation to tours abroad would not be taxed and in case of composite tours one would have to refer Export of Service Rules 2005 to find out whether the same would amount to export of service. The liability extends to contract carriage as well.

The concept of "tour" does not include a journey organized or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field.

Whether tour in a vehicle having stage carriage permit is liable?

The definition with effect from 16.05.08 does not cover transport under stage carriage permit and therefore the same would not be liable. Transport under contract carriage would be liable provided the operator engages in planning, scheduling, organizing or arranging tours.

In Tamil Nadu State Transport Corporation Ltd Vs CCE Trichy (2009-TIOL-623-CESTAT-Mad), the activity of deploying the Tamil Nadu State Transport Corporation buses to transport employees of BHEL from various points was held not to be liable to service tax under this category.

Whether services in relation to composite journeys where part of travel is abroad and part of it is in India be liable?

If one goes through circular 96/6/2007 dated 23.08.07 issued by the department, the gross amount would be liable where the ultimate destination is outside India or it is a round the world trip and one lump sum amount is charged. This was in context of travel by air for international journey

Readers should also refer the chapter on exemptions for exemptions under this category.

When a tour operator directly book cruise package outside India, what is the implication of service tax?

As the said service was provided in relation to outbound tours, it would be covered under tour operator service. However if the conditions pertaining to export of service rules are duly complied with, the same would treated as export of services and not be liable to service tax.

When a tour operator does a hotel booking, via an intermediary, what is the implication of service tax ?

The aforesaid activity would enable the customers book hotel rooms in India, and the same would be covered under the category of tour operator service, the service provider would get an abatement of 90% from gross amount, and wherein the service provider also provides service of accommodation, the value should also include the cost of such accommodation.

Commercial training or coaching

A review of the definitions would reveal that any institute or establishment imparting skill or knowledge or lessons on any subject other than sports would be liable. The service in relation to commercial training or coaching may be provided to any person. But where the said institute or establishment issues any certificate or diploma or degree or any educational qualification whether or not recognized by law, there would be liability under this category on such coaching/training. Here, readers should note that where the institute or establishment issues a degree or diploma or certificate or educational qualification whether or not recognized by law, the said institute or establishment would be regarded as a commercial training or coaching centre and therefore even other coaching services like preparation of candidates for entrance exams or competitive exams would be liable to service tax.. Preschool coaching is not taxable.

Thus where the taxability is to be examined under this heading, one should first of all ascertain whether the service provider can be regarded as a commercial training or coaching centre at all. Vide the Finance Bill, 2010 an explanation was added, with effect from 01.07.2003, that a commercial training or coaching centre shall include any training centre or institute whether registered as a trust or society or not and whether having profit motive or not. Hence now exclusion cannot be claimed by non-profit organizations. Where the service provider cannot be regarded as a commercial training or coaching centre, the service provided cannot be held to be liable under this category. In this regard, the meaning of the terms “establishment” and “institute” would have to be studied. These terms have not been defined under service tax but if one were to refer Random House Webster’s Dictionary, the following would emerge –

“Establishment” can mean a permanent civil, military or other force or organisation. “Institute” in this context, means a society or organisation for carrying on a particular work, as of a literary, scientific or educational character. So, unless the service provider can be regarded as being an establishment or institute, there cannot be a liability under this heading.

Services provided in relation to commercial training or coaching by a vocational training institute or a recreational training institute

The services in relation to commercial training or coaching provided by a vocational training institute or a recreational training institute to any person, has been exempted from service tax vide Notification 24/2004 ST dated 10.09.2004. For this purpose, "vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. A "recreational training institute" means a commercial training or coaching centre which provides training or coaching relating to recreational activities such as dance, singing, martial arts or hobbies.

Services provided by a commercial training or coaching centre to an institute or establishment leading to issue of degree or certificate or educational qualification whether or not recognized recognized by law

The services in relation to commercial training or coaching provided by the commercial training or coaching centre would be exempt from service tax where the same forms an essential part of the curriculum or course of the other institute or establishment leading to an issue of degree or certificate or diploma or educational qualification recognized by law for the time being in force. This exemption has been in force from 01.07.2003 under Notification 10/2003 ST dated 20.06.2003.

Services in relation to commercial training or coaching provided by a computer training institute

Notification 19/2005 ST dated 07.06.2005 was issued by the Government which specifically excludes services in relation to commercial training or coaching provided by a computer training institute, from the purview of exemption notification 24/2004 ST. In other words where a computer training institute provides vocational training, the same would not be exempt from service tax. Though this amendment was made in 2005, the services referred to here, enjoyed specific exemption under notification 9/2003 dated 20.06.03 whose validity had been extended up to 30.06.2004. For this purpose, the "computer training institute" was defined to be a commercial training or coaching centre which provides coaching or training relating to computer software or hardware.

Whether the service of pre-screening of candidates and conducting assessment tests in order to admit them to specific courses, is liable under this category?

No. This activity cannot be liable under this heading where no skill or knowledge transfer is involved. The activity would have to be seen under the heading Manpower recruitment or supply agency's services where once again the same would not be liable as the service is not in relation to recruitment/supply.

Whether the computer training provided to clients now would be taxable?

Yes. The exemption on vocational training under notification 24/2004 ST was revoked in 2005 with regard to training provided by a computer training institute. Therefore, computer training (whether in relation to software or hardware) provided now would be taxable even if the same is to enable the client to take up employment or to engage himself in self-employment.

Whether higher education is to be distinguished from commercial training and coaching as defined under Finance Act?

The decision given in Great Lakes Institute case has also been followed in Magnus Society Vs Comm. Of Customs, Service Tax and Central Excise Hyderabad (2008-TIOL-1812-CESTAT-Bang) where the Tribunal went one step further to distinguish higher education (like MBA and Management in Computer Science or other disciplines) from commercial training and coaching as defined under Finance Act as higher education was far more comprehensive as compared to training in particular skill. Higher education could include coaching and training but vice-versa was not possible. But whether this view would prevail in the long run is something that would have to be seen in due course of time.

Whether commercial training or coaching institutes which prepare applicants for Board Exams or competitive exams or entrance exams etc are liable to service tax?

Yes. This matter had been specifically clarified by Circular 59/8/2003 ST dated 20.06.2003 which held the said service of preparing applicants for competitive exams, liable to service tax.

Postal coaching

Even postal coaching i.e. distance education where coaching is done by sending across materials to the candidates would be liable to service tax. The service provider would however have to examine the option of availing the benefit of Notification 12/2003 ST in respect of the value of the goods and materials sold to the service receiver. Circular 59/8/2003 ST clarifies that where

the service provider sells standard text books which are priced, the same can be excluded for the purpose of charging service tax. The value being charged for sale of books should be separately identifiable. Readers may however note that the Tribunal had granted a stay on recovery of service tax in Chate Coaching Classes (P) Ltd Vs CCE Aurangabad (2008 (09) STR 207 (Tri-Mum)) where the department had sought to deny benefit of notification 12/2003 ST where the books sold were not standard text books. The Tribunal held that the circular cannot whittle down the effect of a notification. The assessee would however do well to wait for some more clarity in this regard if benefit is to be claimed without any hassles.

Circular 107/1/2009 ST dated 28.01.2009

This Circular seeks to clarify many of the doubts that have arisen with regard to taxability of commercial training or coaching services under his category. The following aspects have been clarified –

Objective of the institute or establishment providing commercial training or coaching

The objective of the institute or establishment may not be to make profit. In other words, even not for profit organizations would be liable to service tax. The circular draws distinction between the nature of training provided by the institute and the motive of the institute in providing such training. The training should however be for a consideration as there cannot be service tax liability in the absence of consideration.

There may be a view contrary to the one given above if one were to go by the decision of the Tribunal in Great Lakes Institute of Management Ltd Vs CST Chennai (2008 (10) STR 202 (Tri-Chennai)) where service tax was held to be applicable only where the institute providing education was a commercial concern. This view of the Tribunal was contradictory to the Commissioner's view that what was essential was the commercial nature of the services provided and not the nature of the entity itself i.e. whether the entity could be regarded as a commercial concern or not. Interestingly, this view of the department has now been put forth in the new circular 107/1/2009 ST which could lead to some more litigation in this area. However Supreme Court in case of CST Vs Great Lakes Institute of Management Ltd, had directed the Tribunal to examine de novo in light of explanation inserted under Commercial Training or Coaching services.

The view of the department regarding the training and coaching service having to be commercial would also have to be studied. Presently this is not clear.

Where private institutes issue a diploma or certificate of educational qualification to students which are recognized abroad and which enable them to secure jobs, the same would not be covered under the exempted category and would be liable to service tax unless such qualification is recognized by statutory authorities like UGC or AICTE.

In a recent decision Indian Institute of Aircraft Engineering Vs UOI 2013-TIOL-430-HC-DEL-ST in the backdrop of Instruction No. 137/132/2010-ST dated 11.05.2011, CBEC clarifying that Flying Training Institutes providing training for obtaining Commercial Pilot Licence (CPL) and on Aircraft Engineering Institutes for obtaining Basic Aircraft Maintenance Engineer Licence (BAMEL) would clearly come in the category of coaching centres.
Quashing circular held that even if the certificate/degree/diploma/qualification is not the product of a statute but has approval of some kind in 'law', would be exempt. The High Court was of the view that the Act, the Rules and the CAR, having provided for grant of approval to such institutes have recognized the Course Completion Certificate and the qualification offered by such Institutes. The Course Completion Certificate/training offered by such Institutes is recognized by law. Delhi high court has ruled that training provided for obtaining CPL and BAMEL is not liable to service tax.

Institutes providing general course on improving certain skills

The circular specifically covers certain general courses aimed at personality development, improving general grooming, communication skills, effectiveness in group discussion and in facing personal interviews, provided by institutes and holds such courses liable to service tax by distinguishing them from vocational courses which would equip the candidates to take up employment or engage themselves in self-employment. Thus institutes providing general courses and not paying service tax run the risk of facing SCNs from the department where none has been issued so far.

Management or business consultant's services

What is sought to be taxed under this category is the taxable service provided by a management or business consultant in connection with the management of any organisation or business. The areas which are generally dealt with are those spanning – financial management, human resource management, marketing management, production management, logistics management

procurement and management of information technology resources or other similar areas of management.

While the service provider is to be a management or business consultant, there is no specific requirement as to educational qualification and this was also highlighted in Parasmal Bam Vs CCE Indore (2006 (03) STR 73 (Tri-Del)).

Management consultancy Vs Consulting engineer Vs Scientific or technical consultancy service

Readers should be able to distinguish between management consultancy services and that of consulting engineer. The classification of the taxable service would be under the latter category when the service involves advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including computer hardware engineering. The consultancy can be by a professionally qualified engineer or by any body corporate or firm. The liability would be under management or business consultant's service where the advice, consultancy or technical assistance is in relation to management as explained earlier. This would have to be ascertained by reviewing the agreement. Sometimes there could be some confusion especially in terms of production related advice or consulting in case of a manufacturer and the dominant nature of the service would have to be ascertained as to whether it is one of advice in engineering field or one of advice in relation to management of the function itself.

The question of the service being liable under scientific or technical consultancy service would arise where advice, consultancy or scientific or technical assistance in one or more disciplines of science or technology is provided by scientist or technocrat or a science or technology institution or organisation. Thus a proper understanding of the contract would be critical.

Composite services

Readers may also note that there may be cases where a composite contract is entered into like for instance an agreement/contract for operating and maintaining a power plant. In such a scenario, one question that arises is whether such an agreement can be broken up/ vivisected in order to identify possible service elements and tax the same. In CMS (I) Operations & Maintenance Co. (P) Ltd Vs CCE Pondicherry (2007 (07) STR 369 (Tri-Chennai)), the Tribunal held that the contract was for generation of power and that no taxable service was provided and that generation of electricity was within the meaning of manufacture under Central Excise.

Health Service

This service intends to cover the service provided by any hospital, nursing home or a multi-specialty clinic in relation to health check-up, preventive care or treatment in certain cases. Such services would be taxable only when:

a. Any health check-up or preventive care is given to an employee of a business entity and the payment for the same is made by such business entity
b. Any health check-up or treatment is given to a person covered by health insurance scheme and the payment for the is made by the insurance company.

This service was introduced by the Finance Bill, 2010 and the effective date of taxing was from 01.07.2010.

However Finance Bill 2011 has proposed a complete revamp in the definition, which shall be effective from the date to be notified.

In previous year budget, service tax was levied on the health service provided by a Hospital, Nursing Home and Multispecialty clinic to the insured patient and consideration received directly from the Insurance Company. In this budget the service tax base has been enhanced to include clinic, individual doctor etc.

a. Treatment
    i. The taxable service is diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy.
    ii. The service provider is "Clinical Establishment" means a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called.
    iii. It should mandatorily have the facility of central air-condition and should be having more than 25 beds at any time during the financial year.
b. Diagnosis
    i. The taxable service is diagnosis of diseases through pathological, bacterial, genetic, radiological, chemical, biological investigations or other diagnostic or investigate service
    ii. It should have the aid of laboratory or other medical equipment.
    iii. The service provider is any entity either independent or as a part of any clinical establishment.
c. Doctor

i. The taxable service is diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy.
ii. The service provider is a individual doctor, not being an employee of the clinical establishment
iii. The service has to be provided in a clinical establishment.

d. Exclusion

Establishment owned or controlled by Government or a local authority.

With the introduction of this service, now the hospitals are also into tax net and they would be eligible to take the CENVAT credit on the excise duty paid on capital goods, input service and service tax paid on input service. On the other hand the Insurance Company or the Business Entity (if manufacturer or taxable service provide) would be eligible take the credit of the same.

Whether value of medicine supplied during the course of providing treatment was to be included to discharge service tax?

Medicine consumed during the course of treatment was essentially a service contract, further relying upon the decision of Supreme Court in case of Tata Main Hospital 2008 (2) JCR 174, it was held that supply of medicines during treatment in hospital is incidental to the main activity of providing health service and thus not liable under sales tax.

When a health service provider offers cash less facilities for the patients who are the employees of Central & State Government authorities, what are the Implications under service tax?

The service provider would be liable only when the consideration is received from business entity or insurance companies. As a business entity, is defined under sec 65(19b) to include an association of person, body of individuals, company or firm but does not include an individual. In the view of the author Govt cannot be considered as a business entity.

This taxable services category was fully exempted from service tax by exemption notification no.30/2011-ST wef 1.5.2011.

Legal Consultancy service

This services covers services provided in relation to advice, consultancy or assistance in any branch of law, in any manner but does not include any service of appearance before any court of law or statutory authority. Further the service provider and service recipient shall be business

entity for the same to be taxable. Hence where service is provided by an individual or service is received by an individual then there is no liability.

Finance Bill 2011 has expanded the coverage to either a business entity providing the service or business entity receiving the service. Therefore only services provided by individuals and received by individuals would be outside the net.

Business entity includes an association of persons, body of individuals, company or firm but does not include an individual.

This service was introduced by the Finance Act, 2009 and the effective date of taxing this service was 01.09.2009

Services that would be exempt under this head

The circular 334/13/2009 dated 06.07.2009 clarifies the exclusion of appearance before any court of law or appearance before any statutory authority from service tax. So preparation of memorandum appeal which are submissions before statutory authority in support of the case would also not be liable. Further preparation and certification of affidavit, acting as an official liquidator etc. would be outside the purview of service tax. However with Finance bill 2011, the aforesaid exclusion with respect to appearance before any court of law or appearance before any statutory authority is brought into the tax net which is against the rights of the citizen.

Services that might get covered under this head

Preparation of notice by lawyer firm would get covered as it would be in the nature of technical assistance and any consultancy or advice provided by non individual to a non individual would get covered.

In opinion of the authors, lawyers are professionals as they are not engaged in any activity of trade, but render service to the clients as they are governed by the code of ethics similar to the Chartered Accountants. Therefore they may not be considered as business entities and consequently may not be covered.

Brand Promotion service

This service intends to cover the under mentioned activity done by appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event

a. promotion or marketing of a brand of :
    i. goods,
    ii. service,

iii. event

b. endorsement of name including a :

i. trade name,

ii. logo of a business entity

iii. house mark of a business entity

Brand has also been defined for this purpose to include symbol, monogram, label, signature or invented words which indicate connection with the said goods, service, and event or business entity.

The service in relation to promoting or marketing or sale of goods is already covered under the category "Business Auxiliary Service", however the cases of promotion of the brand of the company per say and not related to any product was escaping tax net, to tap this type of promotion, a new service has been introduced. The TRU circular expresses the intention of introduction of this service as to tax the celebrities (film stars, cricketers etc) who act a brand ambassador.

Whether mere acting would amount to brand promotion service?

The intension of the said service was to only tax brand promotion service, in case of any person merely acts, without promoting the brand would not be taxed under this head.

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- Central Excise Made Easy published by Madhukar N Hiregange, Rajesh Kumar TR and VS Sudhir. Published by Bharat Law House
- Central Excise Law & Procedures 13th Edition – V. Raghuraman and Madhukar N Hiregange. Published by Centax Publication
- Central Excise Manual by Mr. RK Jain
- Articles from web site- hiregange.com

Legends

- CCE – Commissioner of Central Excise
- ACCE – Assistant Commissioner of Central Excise
- DCCE – Deputy Commissioner of Central Excise
- STRP – Service Tax Return Preparer
- CETA – Central Excise Tariff Act
- CTA – Customs Tariff Act
- SHE – Secondary & Higher Education
- IT – Information Technology
- FEMA – Foreign Exchange Management Act
- BAS – Business Auxilliary Service
- BSS – Business Support Service
- WC – Works Contract Service
- GTA – Goods Transport Agency service

APPENDIX

Appendix I

NAME of Registered Assessee: _____

STC (Service Tax Code/ Registration Code): _____

1. **Division:**
2. **Range: (Please mention Range Number) _____**
3. **Email id: _____**
4. **Repeat Email id: _____**
5. **Constitution of your Firm: _____**
   (Proprietorship / Partnership / Registered Public Limited Company / Registered Private Limited Company / Registered Trust / Society / Co-operative Society / Others)
6. **Contact Person Name: _____**
7. **Contact Number: _____**

I, hereby declare the I am duly authorized by M/s _____ to sign this declaration and the contents of this declaration are true and correct.

(Signature)

Name: _____

Designation:_____

Date:_____

To (Please send to the concerned jurisdictional Division)

APPENDIX II

A filled Form ST-1

We would take a simple example of an assessee who wishes to register a single premises for 2 services.The same form would have to be used in case it is an amendment of an existing

registration (like say change of address or change in authorized signatory etc.) The form that is filled below is self explanatory except certain aspects which are explained below:

Category of registrant: In case an assessee is liabile to pay service tax as a recipient of service (say GTA) then he would have to select the option 'service recipient' as well, else just selecting the option 'service provider' would suffice.

Nature of registration: Where an assessee provides or receives taxable services from/at more than one premises then he shall have to register all such premises. Where the assessee has a centralized accounting or billing then he can get a centralized service tax registration by selecting the option 'centralised registration for more than one premises'. He shall be required to mention the addresses of all the premises he wishes to register in 5(b). Further the address of the premises where there is centralized accounting or billing would have to be mentioned in S No. 6 in the form.

In S No. 7 all the taxable services for whih the assessee wishes to register shall be mentioned.

Form ST – 1

[Application form forregistration under Section 69 of the Finance Act, 1994 (32 of 1994)]

(*Please tick appropriate box below*)

☐ **New Registration**

☐ **Amendments** to information declared by the existing Registrant

Registration Number in case of existing Registrant seeking Amendment

1. **(a)** Name of applicant

L	**E**	**R**		**C**	**O**	**N**	**S**	**T**	**R**	**U**	**C**	**T**	**I**	**O**	**N**	**S**		**L**	**T**	**D**		

(b) Address of the applicant

5	**8**	**/**	**2**	**6**	**9**		**G**	**A**	**N**	**D**	**H**	**I**		**N**	**A**	**G**	**A**	**R**			
P	**A**	**N**	**J**	**A**	**G**	**U**	**T**	**T**	**A**												

H	**Y**	**D**	**E**	**R**	**A**	**B**	**A**	**D**												
5	**0**	**0**	**0**	**1**	**2**															

2. Details of Permanent Account Number (PAN) of the applicant

(a) Whether PAN has been issued by the Income Tax Department

Y	**E**	**S**

Yes No

(b) If Yes, the PAN

A	**D**	**F**	**T**	**G**	**H**	**J**	**3**	**7**	**5**

(c) Name of the applicant (as appearing in PAN)

L	**E**	**R**		**C**	**O**	**N**	**S**	**T**	**R**	**U**	**C**	**T**	**I**	**O**	**N**	**S**		**L**	**T**	**D**

3. **(a)** Constitution of applicant (Tick as applicable)

(i) Proprietorship

☐

(ii) Partnership

☐

(iii) Registered Public Limited Company

☑

(iv) Registered Private Limited Company

☐

(v) Registered Trust

☐

(vi) Society/Cooperative society

☐

(vii) Others

☐

(b) Name, Address and Phone Number of ~~Proprietor/ Partner/~~ Director

(i) Name

M	**R.**		**R**	**A**	**J**	**I**	**V**		**M**	**E**	**H**	**T**	**A**

(ii) Address

1	**4**		**P**	**A**	**N**	**J**	**A**	**G**	**U**	**T**	**T**	**A**		**R**	**O**	**A**	**D**
H	**Y**	**D**	**E**	**R**	**A**	**B**	**A**	**D**									

(iii) Phone Number

9	**7**	**4**	**6**	**3**	**5**	**6**	**7**	**8**	**3**

4. Category of Registrant (*Please tick appropriate box*)

(a)Person liable to pay service tax

(i) Service provider ☐

(ii) Service recipient ☐

(b)Other person/class of persons ☐

(i) Input service distributor

(ii) Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds nine lakh rupees ☐

5. **(a)** Nature of Registration *(Tick as applicable)* ☐

(i) Registration of single premises

(ii) Centralized registration for more than one premises ☐

(b) Address of premises for which registration is sought

(i) Name of Premises/ Building

(ii) Flat/ Door/ Block No.

5 5 / 2 6 9

(iii) Road/ Street/ Lane

G A N D H I N A G A R

(iv) Village/ Area/ Lane

P A N J A G U T T A

(v) Block/ Taluk/ Sub-Division/ Town

(vi) Post office

P A N J A G U T T A

(vii)City/ District

H Y D E R A B A D

(viii)State/ Union Territory

A N D H R A P R A D E S H

(ix) PIN

5 0 0 0 1 2

(x) Telephone Nos.:

2 3 6 7 4 3 5 9

(xi) Fax No.

(xii) E-mail Address

R	A	J	I	V	@	L	E	R	.	C	P	M									

(c) In case of application for Centralized Registration, furnish address of **all** the premises from where taxable services are provided or intended to be provided (Format as per 5(b) above)

Premises: 1

(i) Name of Premises/ Building

(ii) Flat/ Door/ Block No.

(iii) Road/ Street/ Lane

(iv) Village/ Area/ Lane

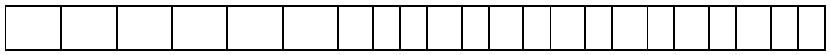
(v) Block/ Taluk/ Sub-Division/ Town

(vi) Post office

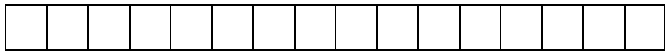
(vii)City/ District

(viii)State/ Union Territory

(ix) PIN



(x) Telephone Nos.:



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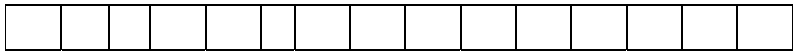
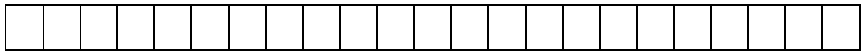


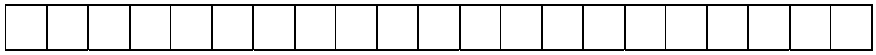
(xii) E-mail Address

Premises: 2

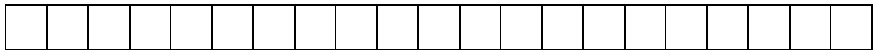
(i) Name of Premises/ Building



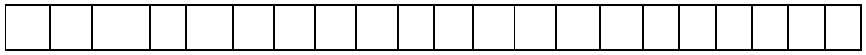
(ii) Flat/ Door/ Block No.



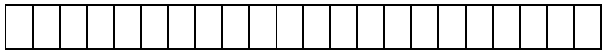
(iii) Road/ Street/ Lane



(iv) Village/ Area/ Lane



(v) Block/ Taluk/ Sub-Division/ Town



(vi) Post office

(vii)City/ District

(viii)State/ Union Territory

(ix) PIN

(x) Telephone Nos.:

(xi) Fax No.

(xii) E-mail Address

(d) In case of application for Input Service Distributor, furnish address of **all** the premises to which credit of input services is distributed or intended to be distributed (Format as per 5(b) above)

6. Address of the premises or office paying service tax under centralised billing or centralised accounting under sub-rule (2) and (3A) of rule 4 of the Service Tax Rules, 1994.

Address

7. Description of taxable services provided or to be provided by applicant

Sr. No.	Description of service	Relevant clause of section 65 of the Finance Act, 1994, to be indicated, if possible
(1)	(2)	(3)
1	Commercial or Industrial constructions	zzq
2	Comstruction of complex	zzzh

8. Name, designation and address of the **authorized signatory/ signatories:**

Name	Designation	Address
Rajiv Mehta	**Director**	14, Panjagutta Road, Hyderabad

DECLARATION

I, **Rajiv Mehta** hereby declare that the information given in this application form is true, correct and complete in every respect and that I am authorized to sign on behalf of the registrant.

(a) For new registration:

I would like to receive the Registration Certificate by ~~mail~~ / by hand/ ~~E-MAIL~~

(b) ~~For amendments to information pertaining to existing registrant:~~

~~Date from which amendments are made:~~

~~*(Original existing Registration Certificate is required to be enclosed)*~~

Date:

Place: **Hyderabad** (Signature of the applicant/ authorized person with stamp)

ACKNOWLEDGEMENT

(To be given in the event Registration Certificate is not issued at the time of receipt of application for Registration)

I hereby acknowledge the receipt of your application form

(a) For new Registration

(As desired, the New Registration Certificate would be sent by E-MAIL/ mail/ handed over to you in person on_____)

(b) For amendments to information in existing Registration

(I hereby acknowledge receipt of original existing Registration Certificate)

Date: Signature of the Officer of Central Excise

(with Name & Official Seal)

Appendix-III

Tips for filing the ST-3 Return

Sl.No. return	**Particulars**	**Remarks**
A1	General Information	Assesssee is required to mention whether the return is original or Revised return
A2	STC Number	Service tax registration number of the assesssee is required to be mentioned
A3	Name	Full Name of the assesssee to be mentioned
A4	Financial Year	Financial year to which the return pertains needs to be mentioned.
A5	Return for the period	Period for which the return belongs required to be mentioned i.e. April-September or October to March. For this time it is July 2012 to September 2012
A6	Large Tax Payers details	If assesssee is LTU then he has to select and also required to mention the LTU name from drop down list.

A7	Premises code	Assesssee needs to mention the premises code of the business allotted by the department. It is suggested to take the same from the ST-2 while filling the return.
A8	Constitution	Constitution of the assesssee needs to be selected
A9	Category of Service	Assesssee is required to mention the category of service under which he is providing service is required to mention.
A10	Assesssee liable to pay service tax	
A10.1	Service Provider under Section 68(1)	All Assessee's except those who are liable to pay service tax under reverse charge and joint charge are required select this column
A10.2	Service receiver under Section 68(2)	The assesssee who is receiver of service of service and is liable to pay service tax is required to select this column. It covers only reverse charge I.e. import of service excluding the partial reverse charge.
A10.3	Service provider under partial reverse charge under Section 68(2)	The Assessee who is liable to pay service tax under partial reverse charge basis as a service provider such as manpower, security, rent a cab and works contract is required to select this column.
A10.4	Service receiver under partial reverse charge under Section 68(2)	The Assessee who is liable to pay service tax under partial reverse charge basis as a service receiver such as manpower, security, rent a cab and works contract is required to select this column.
A10.5	Percentage of service tax for A10.3 above	The assessee who is liable to pay service tax as a service provider under partial reverse charge basis is required to mention the percentage of service tax he is required to pay.
A10.6	Percentage of service tax for A10.4 above	The assessee who is liable to pay service tax as a service receiver under partial reverse charge basis is required to mention the percentage of service tax he is required to pay.
A11	Exemption details	In this column the assessee is required to mention whether he is opted for any exemption and also Notification number of that exemption.
A12	Abatement	If assessee is claiming any abatement under Notification 26/2012 dated 20.06.2012 then he required to select this column and also required to mention the above notification number and corresponding Sl.no. of the notification.
A13	Provisional Assessment	If assessee opted for provisional assessment for then he is required to select this column and also required to mention the order number of the provisional assessment.
B	**Value of taxable service and service tax payable**	
B1.1	Gross amount	In this column the assessee being a service provider is required mention the gross amount for which bills, invoice, challans, invoices or any other documents has been issued related to service provided or to be provided including export and exempted service. But in the above amount amounts received in advance and amount taxable on receipt basis for which bills, invoice or challans have not been raised have to be excluded.

B1.2	Advance received	In this column the assessee is required to mention the amount received as advance but for which bills, invoice or challans have not been raised.
B1.3	Taxable on receipt basis under third proviso to Rule 6(1)	In case of Individual and Partnership firms whose aggregate value of taxable services provided from one or more premises is fifty lakhs rupees or less in the previous financial year the service provider shall have the option to pay service tax on receipt basis up to rupees fifty lakhs in the current financial year. If the assessee comes under the above category then he is required to mention the amount in this column.
B1.4	Bills/ Invoice or challans not been raised	The amount of service provided for which bills, invoice or challans have not been raised is required to mention in this column.
B1.5	Non monetary consideration	The amount received in non-monetary consideration for service provided is required to mention in this column. The value of such service should be equivalent of money.
B1.6	Partial reverse charge	The assessee who is liable to pay service tax under partial reverse charge is required to mention the amount of service which is liable in this column.
B1.7	Total of Gross amount	Total of all the above column should come in this column.
B1.8	Export of service	Amount which is considered as export of service as per the place of provision of service rules and also Rule 6A of service tax rules is required to be mentioned in this column.
B1.9	Exempted Service	The services which are exempted from payment of service tax by virtue of Notification no.25/2012 are to be considered in this column excluding the export of service as mentioned above.
B1.10	Pure agent service	The amount of service which is considered as provided under pure agent concept as specified in the service tax (determination of value) Rules is required to be mentioned in this column.
B1.11	Abatement amount	The amount which is claimed as abatement as per Notification No.26/2012 is required to be mentioned in this column.
B1.12	Any other Deduction	Apart from above if assessee is claiming any deduction like adjustment of excess amount and all is to be mentioned in this column.
B1.13	Total of all deductions	Total of all deduction from B1.8 to B1.12 is to be mentioned in this column.
B1.14	Net taxable value	After deducting B1.13 from B1.7 assessee will get the Net taxable amount.
B1.15	Advolorem rate	Service tax Advolorem rate is to be mentioned in this column i.e.12%.
B1.16	Specific rate	As per the Rule 6 Service tax Rules in case of certain category of services there is specific rate is applicable if the same is applicable for assessee then he is required to mention that rate.
B1.17	Service tax payable	The amount payable as service tax after applying the

		Advolorem or specific rate is be mentioned here.
B1.18	R & D cess	In case of import of certain software there is levy of Research and Development Cess. If the assessee has been levied such cess then he can take deduction of such cess while making payment of service tax on the same. The same amount of R&D cess is required to be mentioned here.
B1.19	Net Service tax payable	After deducting the R&D cess from the service tax payable net service tax payable will come.
B1.20	Education Cess	Education Cess on the net service tax payable at the rate of 2% needs to be mentioned here.
B1.21	Secondary and Higher Education Cess	Secondary and Higher Education Cess on the net service tax payable at the rate of 1% needs to be mentioned here
B2	Service receiver details	This column contains the same details as mentioned in B1 but the only difference is it is applicable for service receiver.
PART C	**Advance payment of service tax**	This part contains the amount of service tax paid in advance details. The same needs to be mentioned with the breakup of service tax, Education and SHE cess with corresponding challans details.
PART D	**Service tax paid details**	
D1	Cash	If service tax is paid using cash then the assessee is required to mention the amount which is paid through cash in this column.
D2	Cenvat Credit	If Assessee is making payment by utilizing the cenvat credit then such amount is required to be mentioned here. In addition to that it is specifically mentioned that this column is not applicable for recipient of service therefore if the assessee is a service receiver then he supposed to pay through cash only.
D3	Adjustment of excess amount	As already mentioned in the PART C if any is paid as an advance then such amount can be utilized for making payment of service tax without any limit as per service tax rules.
D4	Adjustment as per Rule 6(3)	As per Rule 6(3), Service Tax paid on accrual basis but credit note raised subsequently can be adjusted against future payment of Service Tax. Payment made through such adjustments required to be mentioned here.
D5	Adjustment as per Rule 6(4A)	As per rule 6(4A), if the assessee pays the excess amount of Service Tax in the previous month, the same can be adjusted for the current period. Such adjustments required to be mentioned here.
D6	Adjustment as per Rule 6(4C)	As per rule 6(4C), if the assessee pays the Service Tax on Renting of Immovable property without considering the property tax paid, such excess payment can be adjusted for future payments. Such adjustments required to be mentioned here.
D7	Book adjustments by government departments	It is applicable only for governmental departments where there would be option to pay Service tax by book adjustments. Eg: for Indian post dept.

D8	Total tax paid	It is sum total of D1 to D7.
PART E – Education Cess Paid in Cash and Through CENVAT Credit		
E 1	In Cash	Details of Education Paid in Cash for the relevant month to be provided here
E2	By CENVAT Credit (not applicable where the service tax is liable to be paid by the recipient of Service)	Details of Education paid by utilization of CENVAT Credit to be provided here. Further, it says (not applicable where the service tax is liable to be paid by the recipient of Service). This is because, the under Joint & reverse charge mechanism, the Service receiver should require to pay service tax by cash only. Hence, payment by way of CENVAT Credit is not allowed here
E3	By adjustment of amount paid as service tax in advance under Rule 6(1A) of the ST Rules	If the Education Cess requires to be adjusted against the payment made in the previous month, the same requires to be mentioned here.
E4	By adjustment of excess amount paid earlier as service tax and adjusted, by taking credit of such excess service tax paid, in this period under Rule 6(3) of the ST Rules	If the Service Tax has paid in earlier period and credit note has been issued for the same, the same can be adjusted for the current period. This details required to be furnished here.
E5	By adjustment of excess amount paid earlier as service tax and adjusted in this period under Rule 6(4A) of the ST Rules	If any Service Tax has been paid excess under Rule 6(4A) i.e. paying the tax in cash which is more than the liability in the previous period, the same can be adjusted in the current period. Such adjustments required to be furnished here.
E6	By adjustment of excess amount paid earlier as service tax in respect of service of Renting of Immovable Property, on account of non-availment of deduction of property tax paid and adjusted in this period under Rule 6(4C) of the ST Rules	As per Rule 6(4C) excess payment against Renting of Immovable property Service by not considering exemption available for property tax can be adjusted against future payments. Such adjustments required to be disclosed here.
E7	By book adjustment in the case of specified Government departments	This is applicable only for specified government departments for which they can pay the liability through book adjustments
E8	Total Education Cess paid	It is the summary from E1 to E7
PART F – Secondary & Higher Education Cess Paid in Cash and Through CENVAT Credit		
F1	In Cash	Details of SHE Cess Paid in Cash for the relevant month to be provided here
F2	By CENVAT Credit (not applicable where the service tax is liable to be paid by the recipient of Service)	Details of SHE Cess paid by utilization of CENVAT Credit to be provided here. Further, it says (not applicable where the service tax is liable to be paid by the recipient of Service). This is because, the under Joint & reverse charge mechanism, the Service receiver should require to pay service tax by cash only. Hence, payment by way of CENVAT Credit is not allowed here
F3	By adjustment of amount paid	If the SHE Cess requires to be adjusted against the

	as service tax in advance under Rule 6(1A) of the ST Rules	payment made in the previous month, the same requires to be mentioned here.
F4	By adjustment of excess amount paid earlier as service tax and adjusted, by taking credit of such excess service tax paid, in this period under Rule 6(3) of the ST Rules	If the Service Tax has paid in earlier period and credit note has been issued for the same, the same can be adjusted for the current period. This details required to be furnished here.
F5	By adjustment of excess amount paid earlier as service tax and adjusted in this period under Rule 6(4A) of the ST Rules	If any Service Tax has been paid excess under Rule 6(4A) i.e. paying the tax in cash which is more than the liability in the previous period, the same can be adjusted in the current period. Such adjustments required to be furnished here.
F6	By adjustment of excess amount paid earlier as service tax in respect of service of Renting of Immovable Property, on account of non-availment of deduction of property tax paid and adjusted in this period under Rule 6(4C) of the ST Rules	As per Rule 6(4C) excess payment against Renting of Immovable property Service by not considering exemption available for property tax can be adjusted against future payments. Such adjustments required to be disclosed here.
F7	By book adjustment in the case of specified Government departments	This is applicable only for specified government departments for which they can pay the liability through book adjustments
F8	Total Secondary & Higher Education Cess paid	It is the summary from E1 to E7
Part G- Arrears, Interest, Penalty, Any Other Amount etc paid		
G1	Arrears of revenue (Tax amount) paid in cash	The details of Service Tax paid in cash in the current period for the previous periods required to be disclosed here
G2	Arrears of revenue (Tax amount) paid by utilising CENVAT credit	The details of Service Tax paid by way of CENVAT Credit in the current period for the previous periods required to be show here
G3	Arrears of Education Cess paid in cash	The details of Education Cess paid in cash in the current period for the previous periods required to be disclosed here
G4	Arrears of Education Cess paid by utilising CENVAT credit	The details of Education Cess paid by way of CENVAT Credit in the current period for the previous periods required to be show here
G5	Arrears of Secondary & Higher Education Cess paid in cash	The details of SHE Cess paid in cash in the current period for the previous periods required to be disclosed here
G6	Arrears of Secondary & Higher Education Cess paid by utilising CENVAT credit	The details of SHE Cess paid by way of CENVAT Credit in the current period for the previous periods required to be show here
G7	Amount paid in terms of section 73A of Finance Act, 1994	Payment Service Tax which collected excess than required to be disclosed here
G8	Interest paid (in cash only)	Interest paid in cash to be disclosed here
G9	Penalty paid (in cash only)	Penalty paid in cash to be disclosed here

G10	Amount of Late fee paid, if any.	Penalty paid for delay in filing of return to be disclosed here
G11	Any other amount paid (please specify)	Any other amount other than this requires to be disclosed here
G12	Total payment of arrears, interest, penalty and any other amount, etc. made G12=(G1+G2+G3+G4+G5+G6 +G7+G8+G9+G10+G11)	It is summary of G1 to G11
Part H		
H1	DETAILS OF CHALLAN	In this details of challan like Challan number, challan date, and challan amount pertaining to the respective month to be disclosed in that month. Challan numbers will first Bank BSR code, then date of payment in Date/MM/Year form and sl.no.
H2	Source documents details for payments made in advance / adjustment,	In this filed the details of source document number required to be disclosed for making adjustments, advance payments, payment of arrears etc. Source document number is previous ST – 3 return acknowledgement number
Part I – Details of CENVAT Credit		
I1.1	Whether providing any exempted service or non-taxable service ('Y'/'N')	Select Yes/No. Yes if providing any exempted service or non taxable service
I1.2	Whether manufacturing any exempted excisable goods ('Y'/'N')	Select Yes/No. Yes if manufacturing exempted goods.
I1.3	If reply to any one of the above is 'Y', whether maintaining separate account for receipt or consumption of input service and input goods [refer to Rule 6 (2) of CENVAT Credit Rules, 2004]('Y'/'N')	Select Yes if separate accounts is being maintained
I1.4	If reply to any one of the columns I1.1&I1.2 above is 'Y' and I1.3 is 'N', which option, from the below mentioned options, is being availed under Rule 6(3) of the CENVAT Credit Rules, 2004	Option under Rule 6(3) of the Cenvat Credit Rules, 2004 should be selected here
I1.4.1	Whether paying an amount equal to 6% of the value of the exempted goods and exempted services [refer to Rule 6(3)(i) of CENVAT Credit Rules, 2004]('Y'/'N'); or	Click Yes if opted for this scheme
I1.4.2	Whether paying an amount	Click Yes if opted for this scheme

	equivalent to CENVAT Credit attributable to inputs and input services used in or in relation to manufacture of exempted goods or provision of exempted services [refer to Rule 6(3)(ii) of CENVAT Credit Rules, 2004]('Y'/'N');or	
I1.4.3	Whether maintaining separate account for receipt or consumption of input goods, taking CENVAT credit only on inputs (used in or in relation to the manufacture of dutiable final products excluding exempted goods and for the provision of output services excluding exempted services) and paying an amount equivalent to CENVAT Credit attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services [refer to Rule 6(3)(iii) of CENVAT Credit Rules, 2004]('Y'/'N')	Click Yes if opted for this scheme
I2. Amount payable under rule 6(3) of the CENVAT Credit Rules, 2004.		
I2.1	Value of exempted goods cleared	Mention value of exempted goods
I2.2	Value of exempted services provided	Mention value of Exemption Service
I2.3	Amount paid under Rule 6(3) of CENVAT Credit Rules, 2004, by debiting CENVAT Credit account	Mention amount paid under rule 6(3) by CENVAT Credit
I2.4	Amount paid under Rule 6(3) of CENVAT Credit Rules, 2004, by cash	Mention amount paid under rule 6(3) by cash
I2.5	Total amount paid under Rule 6(3) of CENVAT Credit Rules, 2004 I2.5 = I2.3 + I2.4	Mention total amount paid under Rule 6(3) of CENVAT Credit Rules, 2004
I3.1 DETAILS OF CENVAT CREDIT OF SERVICE TAX AND CENTRAL EXCISE DUTY TAKEN AND UTILISATION THEREOF –		

I3.1.1	Opening Balance	Opening balance of CENVAT credit to be mentioned here
I3.1.2	Credit taken	
I3.1.2.1	on inputs	Cenvat Credit availed on Inputs required to be mentioned here
I3.1.2.2	On Capital goods	Cenvat credit availed on Capital goods required to be mentioned here
I3.1.2.3	On Input Services received directly	Cenvat credit availed on Input services required to be mentioned here
I3.1.2.4	As received from Input Service distributor	Cenvat Credit received as a distribution from Input Service distributor require to be mentioned here
I3.1.2.5	From inter unit transfer by a LTU	Cenvat credit received from LTU unit (only applicable for LTU) to be shown here
I3.1.2.6	Any other credit taken (please specify)	Credit taken in any other way required to be taken (illustration for this a) department allows to take credit in the current month which is missed out in the previous month by letter. b) availment of excess reversal of credit under Rule 6 of CCR, 2004
I3.1.2.7	Total Credit Taken	Sum of Credit taken
I3.1.3	Credit utilized	
I3.1.3.1	For payment of Service Tax	Credit utilized for payment of Service Tax required to be mentioned here
I3.1.3.2	For payment of education Cess on a taxable service	Credit utilized for payment of Education cess on service tax required to be mentioned here
I3.1.3.3	for payment of Secondary and Higher Education Cess on taxable services	Credit utilized for payment of SHE Cess of Service Tax required to be mentioned here
I3.1.3.4	for payment of excise duty or any other duty	Credit utilized for payment of Excise duty required to be mentioned here
I3.1.3.5	towards clearance of input goods and capital goods removed as such or after use	Credit utilized for payment of Cenvat reversal as such as per rule 3 of Cenvat Credit Rules, required to be mentioned here
I3.1.3.6	towards inter unit transfer to LTU	Cenvat Credit transferred to inter unit transfer to be mentioned (applicable only for LTU unit)
I3.1.3.7	for payment of an amount under rule 6(3) of CENVAT Credit Rules, 2004	Cenvat Credit utilized for payment made under rule 6(3) of CENVAT Credit Rules to be mentioned here.
I3.1.3.8	for any other payments/adjustments/reversal (Please specify)	Payment made for any other reasons apart from above required to be mentioned. Eg: Cenvat reversed for wrong availment of Cenvat Credit etc
I3.1.3.9	TOTAL CREDIT UTILISED I3.1.3.9=(I3.1.3.1+I3.1.3.2+I3.1.3.3+I3.1.3.4+ I3.1.3.5+I3.1.3.6+I3.1.3.7+I3.1.3.8)	Total Cenvat Credit utilized
I3.1.4	Closing Balance of CENVAT	Closing balance to be mentioned here

	credit I3.1.4 = {(I3.1.1 + I3.1.2.7) – I3.1.3.9}	
I3.2 DETAILS OF CENVAT CREDIT OF EDUCATION CESS TAKEN & UTILISATION THEREOF –		
I3.2.1	Opening Balance of Education Cess	Closing balance of previous return to be mentioned here
I3.2.2	Credit of Education Cess taken	
I3.2.2.1	on inputs	E. Cess credit availed on inputs for the current month required to be mentioned here
I3.2.2.2	on capital goods	E. Cess credit availed on Capital goods for the current month required to be mentioned here
I3.2.2.3	on input services received directly	E. Cess credit availed on input services for the current month required to be mentioned here
I3.2.2.4	as received from Input Service Distributor	E.Cess credit received from Input Service Distributor required to be mentioned here
I3.2.2.5	from inter unit transfer by a LTU	E.Cess credit availed from Inter transfer unit required to be mentioned here (It is applicable only for LTU Units)
I3.2.2.6	Any other credit taken (please specify)	Any other credit availed required to be mentioned here
I3.2.2.7	Total credit of Education Cess taken I3.2.2.7= (I3.2.2.1+I3.2.2.2+I3.2.2.3+I3.2 .2.4+ I3.2.2.5+I3.2.2.6)	Total of the above
I3.2.3	Credit of Education Cess utilised	
I3.2.3.1	for payment of Education Cess on goods & services	Credit used for payment of Education Cess on goods and services required to be mentioned here
I3.2.3.2	towards payment of Education Cess on clearance of input goods and capital goods removed as such or after use	Credit used for payment of Education Cess on clearance of Input goods and capital goods removed as such should be mentioned here
I3.2.3.3	towards inter unit transfer to LTU	Credit transferred to inter unit to be mentioned here(this is applicable only for LTU units)
I3.2.3.4	for any other payments/adjustments/ reversal (please specify)	Credit reversed for any other reasons required to be mentioned here
I3.2.3.5	Total credit of Education Cess utilised I3.2.3.5= (I3.2.3.1+I3.2.3.2+I3.2.3.3+I3.2 .3.4)	Total reversal / payment of Education Cess
I3.2.4	Closing Balance of Education	Closing balance of Education Cess

	Cess I3.2.4={(I3.2.1+I3.2.2.7)-I3.2.3.5}	
I3.3 DETAILS OF CENVAT CREDIT OF SECONDARY AND HIGHER EDUCATION CESS TAKEN & UTILISATION THEREOF –		
I3.3.1	Opening Balance of SHEC	Closing balance of previous return to be mentioned here
I3.3.2	Credit of SHEC taken	
I3.3.2.1	on inputs	She Cess credit availed on inputs for the current month required to be mentioned here
I3.3.2.2	on capital goods	She Cess credit availed on Capital goods for the current month required to be mentioned here
I3.3.2.3	on input services received directly	She Cess credit availed on input services for the current month required to be mentioned here
I3.3.2.4	as received from Input Service Distributor	She Cess credit received from Input Service Distributor required to be mentioned here
I3.3.2.5	from inter unit transfer by a LTU	She Cess credit availed from Inter transfer unit required to be mentioned here (It is applicable only for LTU Units)
I3.3.2.6	Any other credit taken (please specify)	Any other credit availed required to be mentioned here
I3.3.2.7	Total credit of SHEC taken I3.3.2.7= (I3.3.2.1+I3.3.2.2+I3.3.2.3+I3.3.2.4+I3.3.2.5+I3.3.2.6)	Total of the above
I3.3.3	Credit of SHEC utilised	
I3.3.3.1	for payment of SHEC on goods & services	Credit used for payment of SHe Cess on goods and services required to be mentioned here
I3.3.3.2	towards payment of SHEC on clearance of input goods and capital goods removed as such or after use	Credit used for payment of She cess on clearance of Input goods and capital goods removed as such should be mentioned here
I3.3.3.3	towards inter unit transfer to LTU	Credit transferred to inter unit to be mentioned here(this is applicable only for LTU units)
I3.3.3.4	for any other payments/adjustments/reversal (please specify)	Credit reversed for any other reasons required to be mentioned here
I3.3.3.5	Total credit of SHEC utilised I3.3.3.5= (I3.3.3.1+I3.3.3.2+I3.3.3.3+I3.3.3.4)	Total reversal / payment of She Cess
I3.3.4	Closing Balance of SHEC I3.3.4 = {(I3.3.1+I3.3.2.7)-I3.3.3.5}	Closing balance of She Cess
Part J- CREDIT DETAILS FOR INPUT SERVICE DISTRIBUTOR **(TO BE FILLED ONLY BY AN INPUT SERVICE DISTRIBUTOR):**		
J1 DETAILS OF CENVAT CREDIT OF SERVICE TAX & CENTRAL EXCISE DUTY TAKEN AND DISTRIBUTION THEREOF –		

J1.1	Opening Balance of CENVAT credit	Opening balance of CENVAT Credit required to be mentioned here
J1.2	Credit taken (for distribution) on input services	Cenvat Credit availed on Input Services for distribution to be mentioned here
J1.3	Credit distributed	Total amount of credit distributed for the month to be mentioned here
J1.4	Credit not eligible for distribution in terms of rule 7(b) of CENVAT Credit Rules, 2004	Credit not eligible as per rule 7(b) of Cenvat Credit Rules, 2004 requires to be mentioned here
J1.5	Closing Balance of CENVAT credit J1.5 = {(J1.1+J1.2) – (J1.3+J1.4)}	Closing balance of Cenvat Credit requires to be mentioned here
J2 DETAILS OF CENVAT CREDIT OF EDUCATION CESS TAKEN AND DISTRIBUTION THEREOF		
J2.1	Opening balance of CENVAT credit of Education Cess	Opening balance of CENVAT Credit of Education Cess required to be mentioned here
J2.2	Credit of Education Cess taken (for distribution) on input services	Cenvat Credit of Education Cess availed on Input Services for distribution to be mentioned here
J2.3	Credit of Education Cess distributed	Total amount of credit distributed for the month to be mentioned here
J2.4	Credit of Education Cess not eligible for distribution in terms of rule 7(b) of CENVAT Credit Rules, 2004	Credit not eligible as per rule 7(b) of Cenvat Credit Rules, 2004 requires to be mentioned here
J2.5	Closing Balance of CENVAT credit of EC = J2.5={(J2.1+J2.2) – (J2.3+J2.4)}	Closing balance of Cenvat Credit of Education Cess requires to be mentioned here
J3 DETAILS OF CENVAT CREDIT OF SECONDARY AND HIGHER EDUCATION CESS TAKEN AND DISTRIBUTION THEREOF –		
J3.1	Opening balance of CENVAT credit of SHEC	Opening balance of CENVAT Credit of SHE Cess required to be mentioned here
J3.2	Credit of SHEC taken (for distribution) on input services	Cenvat Credit of SHE Cess availed on Input Services for distribution to be mentioned here
J3.3	Credit of SHEC distributed	Total amount of credit distributed for the month to be mentioned here
J3.4	Credit of SHEC not eligible for distribution in terms of rule 7(b) of CENVAT Credit Rules, 2004	Credit not eligible as per rule 7(b) of Cenvat Credit Rules, 2004 requires to be mentioned here
J3.5	Closing Balance of CENVAT credit of SHEC = J3.5 ={(J3.1+J3.2) – (J3.3+J3.4)}	Closing balance of Cenvat Credit of SHE Cess requires to be mentioned here
J3.1	Opening balance of CENVAT credit of SHEC	
Part L- Self Assessment Memorandum – In this assessee requires to declare the self assessment procedure followed, above particulars are in with the records and books maintained, Cenvat credit has		

been availed properly, interest deposited for the delay payment made, authorized person on behalf of the company for submitting the return. This declaration to be submitted by clicking the spaced provided for this. Further, name of the signatory, date and place should be provided		
Part L- Service Tax Return preparer – If the assesssee has taken the help of Service Tax return preparer, the details of this requires to be submitted here.		