

## Valuation of Service- S.67 with Service Tax 'Determination of Value' Rules-2006

S. 67 was introduced in 2006 w.e.f. 18.04.2006

### 1. Introduction

In cases where the service provider received any part of the consideration in non monetary form or by way of reimbursement , such item did not figure in the invoice raised, thereby depressing the real value of taxable service.

Section 67 was recast in order to cater to situations where any part of the consideration or the full consideration itself for service provided or to be provided is not received in money.

### Statutory Provision – S. 67

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) 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.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this section,—

(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;

(b) [ \* \* \* ]

(c) "gross amount charged" 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, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

## 1. Service tax chargeable with reference to its value

S. 67 as substituted , does not speak about its 'value of taxable service' but uses the expression ' service tax chargeable on any taxable service with reference to its value'

## 2. Consideration may be monetary

S. 65 B (33) of the Act , defines ' money ' means legal tender , cheque , promissory notes, full of exchange , letter of credit, draft, pay order, travelers cheque, money order, postal or electronic remittance or any similar instrument but shall not include any currency that is held for its numismatic value.

## 3. Tax is payable on the value of taxable service and not on entire value of contract.

It should be carefully noted that S.67[1][i] of the Act uses the word 'such service' and not 'the service' . Such means having the particular quality or character specified; representing or referring to object as already particularized in terms which are not mentioned.

As per Webster dictionary " such " mean 'of kind specified or understood'

The charge should be for taxable service provided or to be provided. Thus, if any other amount is charged which is not for taxable service provided or to be provided, service tax will not be payable on such charge.

Amount of mess charges collected from student has no nexus with coaching activity.

*Aditya college of competitive examination v. CCE [ Bangalore CESTAT ]*

*Agra Steel Corporation V. CCE [ New Delhi- CESTAT ]*

#### 4. Consideration may be non monetary

In this situation , clause (ii) of section 67(1) of the Act, provides that the value shall be such amount in money as , with the addition of service tax charged, is equivalent to the consideration .

Example : Supply of goods or service in return for provision of services- A agrees to provide a tax opinion in return of second hand car from B.

#### 5. Gross amount charged to include service tax payable

Sub section 2 of Section 67 provides that where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of services tax payable, the value of such taxable services shall be such amount, as with the addition of tax payable, is equal to the gross amount charged.

CCE v Advantage media consultants [2008] CESTAT – KOL.

Municipal Corporation of Delhi v CST[2010] CESTAT New Delhi.

#### 6. Tax is payable as soon as the advance is received

Sub section 3 of S. 67 provides that the gross amount charged for the taxable service shall include any amount received towards the taxable services before, during or after the provision of such services. Thus the service tax shall be payable on receipt of advances.

#### 7. Meaning of Consideration need to be understood

As per S. 65B(44) of the Act,

"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (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) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) 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.

Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall 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.— For the purposes of this clause, 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.— For the purposes of this Chapter,—

(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.— 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;

Consideration is the essential ingredients of the definition of service. In other word if the service is provided free of cost i.e. without consideration then the activity would not fall within the purview of service tax. Accordingly , activities such as donation, gifts and free charities are outside the ambit of service . However, it is important to note that the phrase

consideration has not been defined in the Act. Therefore definition of 'consideration' can be adopted from Indian Contract Act, 1872.

## 8. Meaning of 'money' has been omitted from S. 67

Explanation B of S.67 which defines the term 'money' has been deleted w.e.f July 1, 2012. However from the same date new definition has been provided by S. 65B (33). Where 'money' means;

Money means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft , pay order, travelers cheque, money order, postal or electronic remittance or any such similar instruments but shall not include any currency that is held for its numismatic value.

## 9. Valuation can be only with reference to Valuation Rules

Sub section 4 of section 67 of the Act provides that subject to the provision of section [1][2][3] of Section 67 of the Act, the value shall be determined in such manner as may be prescribed. By virtue of Section 94[2] of the Act, the Service Tax (Determination of Value) Rules , 2006 have been issued.

**It is to be note that the Valuation Rules can not overrule the provisions given in Section 67.**

## Rule -2A, Valuation for work contract service

Erstwhile rule 2A has been replaced with the New Rule 2A for valuation of works contract service vide notification no. 24/2012 dated 06.06.2012.

### **Meaning of Work Contract:**

As per Section 65B[54] of the Act, work contract means where in transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction , erection , commissioning, installation , completion , fitting out, repair, maintenance , renovation and alteration of any movable or immovable property or for carrying out any other similar activity or part thereof in relation to such property.

**2A. Determination of value of service portion in the execution of a works contract.-** Subject to the provisions of section 67, the value of service portion in the execution of a works contract , referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

- (i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation.- For the purposes of this clause,-

(a) 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;

(b) value of works contract service shall include, -

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;
- (vi) cost of establishment of the contractor relatable to supply of labour and services;
- (vii) other similar expenses relatable to supply of labour and services; and
- (viii) profit earned by the service provider relatable to supply of labour and services;

(c) 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.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent. of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

Explanation 1.- For the purposes of this rule,-

(a) “original works” means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(d) “total amount” means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.- For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

## **2B. Determination of value of service in relation to money changing.-**

Subject to the provisions of section 67, the value of taxable service provided for the services so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:-

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

Example I: US\$1000 are sold by a customer at the rate of Rupees 45 per US\$.

RBI reference rate for US\$ is Rupees 45.50 for that day.

The taxable value shall be Rupees 500.

Example II: INR70000 is changed into Great Britain Pound (GBP) and the exchange rate offered is Rupees 70, thereby giving GBP 1000.

RBI reference rate for that day for GBP is Rupees 69.

The taxable value shall be Rupees 1000.

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI;

**2C.** Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering.- Subject to the provisions of section 67, the value of 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 a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following Table, namely:-

S.N.	Description	% of total amount
1	Service portion in an Activity wherein goods , being food or any other article of human consumption or any drink [ whether or not intoxicating] supplied in any manner a part of activity, at a restaurant.	40
2.	Service portion in outdoor catering , wherein goods , being food or any other article of human consumption or any drink [ whether or not intoxicating] supplied in any manner a part of such outdoor catering	60

**Explanation 1.-** For the purposes of this rule, “total amount” means the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink(whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting-

- (i) the amount charged for such goods or services, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

**Explanation 2.-** For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986).

### Value is not ascertainable – Rule 3



Subject to the provisions of section 67, the value of taxable service, [where such value is not ascertainable](#), shall be determined by the service provider in the following manner :-



- (a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;
- (b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

#### Rule -3[a]

Nat Steel Equipment P Ltd V. Collector of Central Excise 1988[34] ELT8 in Supreme Court stated that the similar does not mean identical but resemblance between two services in order to constitute the services as similar services.

#### Rule -3[b]

Determining the equivalent money value of consideration. Rule does not devise any method of costing. The Cost Accounting Standard -4 lay down the principal for determination of cost of manufacture of goods for captive consumption.

### Rejection of Value by Central Excise Officer – Rule 4



Rule 4(1) – Central excise officer can call for information and documents to satisfy himself that the value as determined by the service provider is correct as per the provision of the Act.

Rule 4(2) & 4(3) empowers the central excise officer to issue show cause for the amount to be fixed for taxable services and provide opportunity to be heard.

### Make provision for certain specific inclusion and exclusions of cost –

#### Rule -5



Rule 5(1) lays down the general principal while Rule 5(2) deals with the expenditure incurred by the service provider as a pure agent.

Rule 5 (1) of the Valuation Rule : Where certain expenditure or cost are incurred by service provider while providing the taxable service, all such expenditure or cost shall be treated as consideration for taxable services and shall be included in the value for the purpose of charging of service tax.

Explanation : [inserted vide notification no. 24/2012 dated 6.6.2012] for the removable of doubt it is hereby clarified that for the value of taxable service shall be gross amount paid by the person to whom the telecom service is provided by the telegraph authority.

**Reimbursement of out of pocket expenses:**

Rule 5(1) makes clear departure from the earlier position in respect of out of pocket expenses ( such as travelling, boarding , conveyance and lodging) incurred by the service provider during the course of providing the taxable services. Earlier such expenses were not required to be included in to taxable services.

Illustration : A contract with B for building a house. A, an Architect , during the course of providing the services, incurred expenses such as telephone, travel ticket, hotel accommodation , conveyance etc. to perform his services and charge the same in invoice raised to B. Here weather the expenses are charged separately or included in the gross fee shall be subject to service tax. Value of the taxable service for charging service tax is what B pays to A.

**Pure Agent** – Rule 5(2) of the valuation rules provides that expenditure or cost that service provider incurs , as pure agent on behalf of the client, shall be excluded from the value , if service provider fulfill prescribed conditions.

- i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;
- (iv) the recipient of service authorises the service provider to make payment on his behalf;

- (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) 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.

Explanation 1. - For the purposes of sub-rule (2), "pure agent" means a person who -

- (a) 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;
- (b) 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;
- (c) does not use such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services.

Explanation 2. - For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.

illustration of Pure agents ;

1. Octroi or entry fees paid by C&F agent, CHA or transporter on behalf of owner of goods.
2. Expenses incurred by C&F agent and reimbursed by principal such as freight ,labour, godown charges and loading and unloading charges.
3. Custom duty, dock dues, transport charges paid by CHA on behalf of client.

In view of the above prospective, one must have the following arrangement ;

1. Contractual arrangement : this does not mean in writing as the contract act does not requires that agreement should be in writing. However it is advisable to have simple agreement for the services to be rendered as agent on behalf of the client.
2. Disclosure to Act as agent.
3. Break up of consideration is not relevant.

INTERCONTINENTAL CONSULTANTS AND TECHNORATS PVT. LTD. V U.O.I. & ANR – Delhi High Court – November 30,2012

Above case on Rule 5 has been decided against the revenue. In this writ petition, the petitioner challenges the constitutional validity of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to the extent it includes re-imbusement of expenses in the value of taxable services for the purposes of levy of service tax. The petitioner also contends, in the alternative that the said rule is ultra vires of the provisions of Section 66 and 67 of Chapter V of the Finance Act, 1994.

### Specific inclusions and exclusions – Rule -6



- (1) Subject to the provisions of section 67, the value of the taxable services shall include, -
- (i) the 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;
  - (ii) the 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;
  - (iii) the amount of premium charged by the insurer from the policy holder;
  - (iv) the commission received by the air travel agent from the airline;
  - (v) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
  - (vi) the reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
  - (vii) the commission or any amount received by the rail travel agent from the Railways or the customer;
  - (viii) the 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
  - (ix) the 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 and.

(x) the amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service.

(2) Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, does not include -

- (i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;
- (ii) the airfare collected by air travel agent in respect of service provided by him;
- (iii) the rail fare collected by rail travel agent in respect of service provided by him; and
- (iv) interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immovable
- (v) the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger.
- (vi) accidental damages due to unforeseen actions not relatable to the provision of service; and
- (vii) subsidies and grants disbursed by the Government, not directly affecting the value of service.

Exclusion from value mean zero rated ; Exclusion from service means that the service is neither taxable nor exempt. It means that service tax is payable on these activities as these have been removed from the activities. Accordingly, if there are some accidental damages , then the revenue to such an extent would not be subject to reversal of input tax credit. The situation in case of banking and financial company is quite different as specific provisions have been laid down separately in the CENVAT Rules for credit reversal in case of banking and financial institutes.

Rule -7 has been omitted w.e.f 01.07.

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