Programme on
ENABLING SERVICE TAX PRACTICE
Background Material

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

Foreword

Taxation being dynamic in nature undergoes several changes every year. Its ever changing characteristic, increases the complexities of business and profession and thus unwrap the opportunities as well as challenges for the professionals to learn and develop. In such a changing scenario, the expectations from the Chartered Accountants also increases which makes, it imperative for them to broaden their ambit of service spectrum and to keep themselves more acquainted with these developments.

Taking note of rapid developments taking place in the area of Indirect Taxes more particularly in Service Tax, the Indirect Taxes Committee of the Institute of Chartered Accountants of India has updated the Background Material of the Programme on Enabling Service Tax Practice incorporating the changes taking place in the area of service tax. I appreciate the efforts taken by the Indirect Taxes Committee in revising the Background Material in timely manner. I also appreciate the initiate taken by the CA. Sanjay Agarwal, Chairman, CA. Atul Kumar Gupta, Vice-Chairman, Indirect Taxes Committee and other members of the Indirect Taxes Committee.

These programmes cover all important aspects of service tax like Definition of 'service' and its taxability, Declared Service, Concept of 'Negative List of Services', 'Exempted Service', Tax liability under 'Reverse Charge Mechanism' & 'Joint Charge Mechanism', Point of Taxation, Registration, Valuation, Import & Export of Service, etc.

I am sure that this programme would be immensely useful for the members and would assist them in exploring opportunities of practice in the area of service tax.

I wish the programme a grand success.

Date : 05.08.2013
Place : New Delhi

CA. Subodh K. Agrawal
President, ICAI

Vice-President's Message

A paradigm shift in the area of taxation happened around nineteen years ago with the introduction of taxation on three services. Ever since, different Finance Ministers have brought out new services under its tax ambit. Another major shift has happened last year when all services were brought into the service tax net, barring a few that have been specifically mentioned in the negative list.

The reforms in the service tax regime have been increasingly throwing up newer challenges and opportunities for our members. In this dynamic environment, it is necessary for the members to update their knowledge to meet the requirements as they are looked up to assume a leadership role in assessing and managing tax risks, adding value to the organization and identifying opportunity for improvements. Keeping this in view, the Indirect Taxes Committee of ICAI has started this Programme on "Enabling Service Tax Practice" for members of the ICAI to facilitate them and enhance their competencies relating to service tax and opt for practice in this ever increasing field of taxation.

In my personal view, this programme have been very thoughtfully designed covering all important topics like *definition of services and its taxability, concept of negative list of services, point of taxation, valuation, CENVAT credit*, etc.

I appreciate the efforts put in by the Indirect Taxes Committee for revising the background material for the members who would participate in these programme. Eminent subject experts would be deliberating various issues threadbare. I am confident that after attending Programme on "Enabling Service Tax Practice", the knowledge and skills of our members would be enhanced and they would be encouraged to render their services in the area wherein large numbers of opportunities are available.

I wish this programme all success.

Date: 05.08.2013
Place: New Delhi.

CA. K. Raghu
Vice-President, ICAI

Preface

The reforms in the indirect tax regime have been increasingly throwing up newer challenges and opportunities for our members. The Government introduced taxation of services based on negative list in the year 2012, with a view to rationalize the complex service tax law, augment revenues by increasing the tax base, reduce litigation and pave the way for introduction of GST in the coming years. Further, Finance Act, 2013 has introduced one time amnesty scheme in the service tax law to encourage voluntary compliance and broaden the tax base.

In this dynamic environment, it is necessary for the members to update their knowledge to meet the expectation of adding value to the organization and identifying opportunity for improvements as they are looked upon to assume a leadership role in assessing and managing tax risks. The chartered accountant in employment or in practice can play a vital role considering the knowledge of business, accounting and the professional approach.

Considering these development, Indirect Taxes Committee of ICAI has been organising various programme, seminar, conferences and Certificate Course with a view to update the knowledge of the members. One of such initiative is the Programme on "Enabling Service Tax Practice" which was introduced in 2012, with the aim to train atleast 4,000 members in service tax through this programme by March, 2013. The Committee successfully organised 47 such programme across the country till March, 2013 wherein approximately 4,400 members have participated. Further, considering potential opportunity for the members in this area, the Committee has decided to continue to organise such knowledge spreading programme during the year.

At this juncture, I would like to express my sincere gratitude and thanks to CA. Subodh Kumar Agrawal, President, ICAI, CA. K. Raghu, Vice-President, ICAI, CA. Atul Kumar Gupta, Vice-Chairman, Indirect Taxes Committee, as well as other members of the Committee and my colleagues in the Council for their invaluable suggestions and support in this initiative. I must also thanks to indirect tax experts viz., CA. Ashok

Kumar Batra, CA. Rajendra Kumar P., CA. Sushil Kumar Goyal, CA. Arun Kumar Agarwal, and CA. Madhukar N. Hiregange for assisting in revising this background material.

Members may note that this material has been revised/ updated with all the amendments made by Finance Act, 2013 and notifications/circulars issued till August, 2013. Participants are invited to share their feedback by mailing at idtc@icai.in to enable us to make this material more value additive and useful.

Welcome to an enjoyable learning.

Date: 05.08.2013
Place: New Delhi

CA. Sanjay Agarwal
Chairman
Indirect Taxes Committee

Message from the Vice-Chairman

The service sector has been growing at higher rate than other sectors like agriculture and manufacturing sector. This sector covers a wide range of activities, such as trading, transportation, communication, financial, real estate and business services etc. The collection of Government from service tax has also increased manifold from ₹ 410 crores in the year 1994-95 to ₹ 97,509 crore in the year 2011-12 and the budgeted estimate of collection for the year 2013-14 is ₹ 180,141 crores.

The system of taxing services has undergone a change during year 2012 with the introduction of taxation of services based on negative list of services as against the selective system of taxation of services prevalent prior to July, 2012. Under new dispensation all services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another is taxable. Further, with a view to encourage voluntary compliance and broaden tax base, the Service Tax Voluntary Compliance Encouragement Scheme, (VCES) 2013 has been introduced for the service providers as well as service receivers, who have either stopped filing service tax returns, non-filers or non-registrants or who have not disclosed their true liability in the returns filed by them, to pay their tax dues without payment of interest and penalty, which is a welcome step.

I am happy to note that the Indirect Taxes Committee of the ICAI is organising programme on "Enabling Service Tax Practice" across the country to facilitate our members in updating their knowledge and skills in the field of service tax. Further, the way service sector is expanding and changes taking place in service tax law, the programme has become a platform for learning the basics of the service tax, wherein, experts dealt the topics relevant in day-to-day service tax practice.

I am sure that the Background Material revised by the Indirect Taxes Committee would be very useful for members who desire to learn the basics of service tax and enter into this area practice as it covers all

important topics like Definition of Service and its taxability, 'Declared Service', Concept of 'Negative List of Services', Exempted Service, Point of Taxation, Tax liability under Reverse Charge Mechanism & Joint Charge Mechanism, place of provision of service, valuation of taxable service, VCES etc.

I welcome the members to a fruitful and enriching experience.

Date: 05.08.2013

Place: New Delhi.

CA. Atul Kumar Gupta
Vice-Chairman
Indirect Taxes Committee

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Course Structure

Two Days Programme on *"Enabling Service Tax Practice"*

- Opportunities in Service Tax
- Definition of "Service" and its taxability
- Concept of 'Negative List of Services', 'Declared Service' , 'Exempted Service'
- Point of Taxation Rules, 2011
- Tax liability under 'Reverse Charge Mechanism' & 'Joint Charge Mechanism'
- Place of Provision of Service Rules, 2012
- Valuation of Taxable Service
- CENVAT Credit Rules, 2004
- Statutory Compliance like *Registration, Issue of Invoice, Payment of Tax, Adjustment of Excess Payment Of Tax, Filing of Periodical Returns, Refund of Service Tax* etc.,
- Recent Issues in Service Tax *including Construction Activities and Works Contract*
- Service Tax Voluntary Compliance Encouragement Scheme, 2013

Three Days Programme on *"Enabling Service Tax Practice"*

- Opportunities in Service Tax
- Definition of "Service" and its taxability
- Concept of 'Negative List of Services', 'Declared Service' , 'Exempted Service'
- Tax liability under 'Reverse Charge Mechanism' & 'Joint Charge Mechanism'
- Point of Taxation Rules, 2011
- Place of Provision of Service Rules, 2012
- Valuation of Taxable Service
- CENVAT Credit Rules, 2004
- Statutory Compliance like *Registration, Issue of Invoice, Payment of Tax, Adjustment of Excess Payment Of Tax, Filing of Periodical Returns, Refund of Service Tax* etc.,
- Recent Issues in Service Tax *including Construction Activities and Works Contract*

- Handling of Service Tax Audit by the Department
- Handling Show Cause Notice, like *Analysis of Show Cause Notice, Drafting Reply of Show Cause Notice, Preparation of Evidences, etc.*
- Handling of Adjudication
- Handling of Service Tax Appeal before the Commissioner (Appeal) *like Drafting of Statement of Facts, Grounds of Appeal, Stay Petition etc.*
- Service Tax Voluntary Compliance Encouragement Scheme, 2013

Four Days Programme on *"Enabling Service Tax Practice"*

- Opportunities in Service tax
- Definition of "Service" and its taxability
- Concept of 'Negative List of Services', 'Declared Service' , 'Exempted Service'
- Tax liability under ' Reverse Charge Mechanism' & 'Joint Charge Mechanism'
- Point of Taxation Rules, 2011
- Place of Provision of Service Rules, 2012
- Valuation of Taxable Service
- CENVAT Credit Rules, 2004
- Service Tax Rules, 1994
- Statutory Compliance like *Registration, Issue of Invoice, Payment of Tax, Adjustment of Excess Payment Of Tax, Filing of Periodical Returns, Refund of Service Tax* etc.,
- Recent Issues in Service Tax *including Construction Activities and Works Contract*
- Handling of Service Tax Audit by the Department
- Handling Show Cause Notice, like *Analysis of Show Cause Notice, Drafting Reply of Show Cause Notice, Preparation of Evidences, etc.*
- Handling of Adjudication
- Handling of Service Tax Appeal before the Commissioner (Appeal) *like Drafting of Statement of Facts, Grounds of Appeal, Stay Petition etc.*
- How to Write an Opinion – Live Case Study
- Review Audit & Common Errors
- Service Tax Voluntary Compliance Encouragement Scheme, 2013

Professional Opportunities in Indirect Taxes

Introduction

Indian economy being a savings economy as compared to the western world is well on course to show direction to the rest of the globe. On the one hand when global economy is growing at a rate of 3.2%, India is marching confidently towards 5 to 6% GDP growth though it has been recently having a few hiccups. In order to achieve its growth story, Indian economy is undergoing sweeping change in the tax laws wherein, Indirect taxes are not far behind. The significance of indirect taxes in the national economy can be understood from the fact that total indirect tax revenue across India (both Central and State) is at least two and a half times the total direct tax revenue.

Multiplicity of taxes and high rates of taxation have made the indirect tax structure quite complex in India, adversely affecting competitiveness of trade and industry and growth of economy. India's most awaited tax reform *viz*., Goods and Services Tax is hailed as *panacea for all ills* plaguing the indirect tax structure of the country. The Goods and Services Tax (GST) is proposed to be comprehensive tax levy on manufacture, sale and consumption of goods as well as services at a national level. Integration of goods and services tax would give India a world class tax system and improve tax collection. Presently, there are parallel systems of indirect taxation at the Centre and State levels. Each of the systems needs to be reformed and eventually harmonized. GST will subsume several indirect taxes and eliminate the cascading effects of multiple layers of taxation which is currently in the range of about 25-30% and make imports cheaper and exports more competitive. GST is proposed to facilitate seamless credit across the entire supply chain and across all states under a common tax. Though, it is expected that there would still be restriction on the setoff of CGST to SGST and *vice cersa.* All this would be the harbinger of many new professional opportunities for our members and an advisor who would not be updated with the current tax laws would find it difficult to guide the tax payer.

The Chartered Accountants (CAs) possess the following advantages over those who have been traditionally practicing in Indirect Taxes:

A. Better knowledge of Global/ Indian Economy

B. Knowledge of Business gained in his/ her Articleship and Practice/ Employment

C. In-depth Knowledge of Accountancy

D. Advance knowledge of the subject

E. Only professional course with Mandatory Continued Professional Education (CPE) i.e., regular updation of the members through Seminar/ Conference/ Workshops.

F. Regulated by Code of Ethics which is being enforced

Emerging Opportunities in Indirect Tax

The Chartered Accountant (CA) as a business professional [employment or practice] can provide services in 4 main baskets as per the study of the IFAC as under:

A. *Creator of Value: Strategic Advisory Services, Policy making*

B. *Enabler of Value: Supporting Management in decision making, analysing and evaluating performance*

C. *Preserver of Value: Mitigating risk, implementing internal controls, and MIS*

D. *Reporter of Value: Ensuring relevant and useful internal and external reporting. More details on www.ifac.org – exposure draft – competent and versatile*

Professional Opportunities

The chartered accountant is a versatile professional who has unparalleled practical exposure and a tough examination. They certainly count among top 1-2 % of the population in terms of education and knowledge. The area of service tax practice may not be much different from the practice in direct taxes, which is much more familiar to this community. The younger members have had this subject as a part of their curriculum, and may enjoy a slight advantage. The respect for the practitioner in this area is generally much higher due to the dearth of professionals in this area along and with the generally low awareness of this law. The compensation would also be significantly higher as well as the stakes involved especially in litigation.

Some of the areas where services are already being provided in metros as well as tier 2 cities are as under:

1. *Where there are large projects in government or commercial sphere by proper tax planning*: Indirect tax costs which could form up to 25% of value, (Excise 12% +VAT 13%/ Service Tax 12% + Misc taxes 2%) could be reduced, by structuring the transaction in such a way that, on one hand maximum tax benefit can be given to the assessee and on the other hand the competitive pricing is being ensured.. The professional accountants with their knowledge could guide the client in structuring the transaction such as examining the transaction ascertaining the nature of customer, whether the customers could avail credit, obtaining dealer registration in order to pass on the credit etc. Thus, a professional plays a vital role in reducing the tax burden and making the price of the product more competitive.

2. *Initial Registration*: Registration is one of services that could be of help to the client and it does not take too many days. The confirmation with the negative list that the client's service is not excluded and with exemptions to ensure that the same is not exempted maybe value additive areas at that point of time.

Further, professionals could ensure that the right information was disclosed during registration in order to avoid future hassles. Also, they could ensure that all the information as required was duly provided in the registration process in order to avoid the delay in obtaining registration.

3. *Initial Disclosures to Department*: Initial disclosures made to the department such as books of accounts maintained, procedures followed by the assessee, copies of documents including copies of important contracts and tax treatment with respect to the same, play a significant role which most of the assessees tend to overlook. Thus, initial disclosures made to the department could save an assessee from being assessed to tax from extended period of limitation [5 years] and imposition of penalties u/s 78 of the Finance Act, 1994, as amended or Section 11AC of Central Excise Act, 1944.

4. *Initial Procedures*: As the assessee would not be aware of the law, chartered accountants can explore the opportunity of providing the initial hand holding exercise, wherein for the initial few months of operations, Chartered Accountants could assist/ guide the assessee in maintaining the accounts, raising the bills, drafting quotation, filing of returns, payment of service tax, calculation of interest standard operating procedures, controls to be instituted.

5. *Monthly/ Quarterly payment of Tax/ Duties*: Assessees having multi-dimensional activity, having to comply with different laws, would welcome outsourcing their tax computation and tax remittance activity, so that the assessee is not burdened with tax compliance work, and thereby enabled to carry out their routine work.

6. *Return Verification/ Filing of Returns/ Filing of Bill of Entry*: Where the client was keeping records and passing entries but was not abreast of latest amendments etc, professionals could explore an opportunity of reviewing the returns, ensuring the tax returns depict true and correct information, and avoiding litigation hassles. A basic understanding of law and Information technology would help in this service.

7. *Service Tax Review and Quarterly Audit*: Chartered Accountants could pro*vide* a value addition review audit, wherein the chartered accountant could examine, whether the eligible tax credits are duly availed, documentation for availing credits, classification of goods/ services, filing of returns in time, availing the benefits of exemptions, disclosures made to department, exploring the opportunity of job work transaction, making payments under protest when the levy was unconstitutional etc., are properly being made by the client or not. In a nutshell, review of Indirect Tax transactions as a separate service or a part of internal audit would not only create value addition to the clients, but also provide better remuneration to the chartered accountants than attesting function.

8. *Review just before Departmental Audit*: A professional could take up reviews

immediately prior to start of departmental audit as a pre-audit. Such a review could pro*vide* the assessee an opportunity to ascertain the grey areas and possible risk associated with it. It also provides the assessee an opportunity to take immediate action to rectify the grey areas and mitigate the risk of hefty demand notices along with interest and penalty. It also provides a feeling of comfort that major issues/ possible errors have been examined.

9. *Assistance during departmental IAP or CAG audit*: These audits are dreaded by the tax payer who normally has a very limited knowledge of the provisions and rules. Therefore a knowledgeable professional Chartered Accountant is needed who can interface with the department. Such assistance could really pro*vide* a great value addition to the client. As chartered accountants would be abreast of all the latest amendments, notification etc., it would restrict departmental officers from exposing the clients to unwarranted issues, committing false statements, making them reverse credits on oral instructions etc., which could create problems to the assessee at the higher forums during litigation.

10. *Opinions/ Clarifications*: Where the Indirect Taxes consultation is given by a chartered accountant over a number of years, whether industry is doing well or not the client would be able to structure his availment of credits, payments towards liability of service tax optimally, thus ensuring smooth cash flow to other aspects of his business. The Chartered Accountant with a good idea of business is an ideal professional for this.

11. *Transaction Structuring*: Chartered Accountants would play a vital role in the area of transaction structuring. In the area of transaction structuring, chartered accountants, plays a significant role in tax planning, credit availing and utilization, input service distribution, centralized registration etc., the impact of which would be felt in the form of litigation free business, due compliance with the law and also in getting over problem created by uncertain tax laws.

12. *Effect of Budget/ Recent Changes on Activity*: Updating and getting abreast of the budget changes, its implications on the existing business practice and alteration of business practice in case of negative impact due to such amendment, would also play an important role. Therefore, Chartered Accountant can look into this area of professional opportunity.

13. *Refunds of Service Tax*: Today assisting the client in complying with information, documentation and collation of data for the purpose of applying for refund of service tax and excise, provides an opportunity. However this area of practice requires high ethical standards to be followed.

14. *Rectification of Past Errors*: Compliance with least difficulty considering the various exemptions, date of applicability, availment of credits, voluntarily to avoid penalties.

15. *Departmental Letter Reply*: Almost every departmental audit has 6-20 or more objections. A reasoned reply provided to the audits by professional with extracts of the law/ circulars or Tribunal Judgments may eliminate 90% of the points, which in turn would result in low probability of litigation.

16. *Show Cause Notice (SCN) Reply*: The best learning (as also the earnings) generally come to the professional when he/ she handles the SCN reply as the result would also determine where he is perceived to be. At this point the professional should let the client know the chances in writing / mail so that there is no scope for disappointment. The law is changing and at times is neither equitable nor reasonable and therefore false assurances are to be avoided to keep up credibility.

17. *Representation before Adjudicating Authority*: This normally follows the Show Cause Notice (SCN) reply. All the important evidences and defenses and factual issues should be put forward at this point to the extent possible to get all the necessary details.

18. *Reply/ Representation at Appellate Forums*: Since, in reply and representation at the Commissioner (Appeal) stage and Tribunal stage large stakes are involved the assistance of an experienced pleader whether a chartered accountant or advocate maybe sought.

19. *Assistance to Advocate at High Court/ Supreme Court*: As the professionals cannot represent they can play the role of advising the advocates.

20. *Outsourcing of the Function*: Many MNC would be keen to outsource this uncertain law to professionals who would account, file returns and litigate, if necessary. In other words, it is the professional who would take responsibility and own this function for the client.

21. *Other Area*: These could be in training/ teaching, writing articles, assisting in drafting the notification or authoring. Training could in the form of weekly training sessions to the clients, in the area of altering the transaction structuring due to change in the law.

However, before making his/ her selection, the professional should remember that the subject of service tax is quite complex, as compared to central excise which is a well settled law. He/ she should first of all have exposure to this area plus proper training for desired results. The knowledge of central excise can be useful. Actually working under a Chartered Accountant in indirect practice or an advocate can give an edge.

The formula for success for the practitioner is that he/ she should pro*vide* quality, at the appropriate price with grace and affection and there should be service in the practice.

Other Requirement for Practice Ethical Standards

The adoption of high ethical values is the biggest asset for the professional.

Starter in Employment or Practioner's

A. Attend as many study circles/ seminars/ conferences/ workshops on subject as possible.

B. Create a small study circle of subject experts in your geographical vicinity on a set day/ time and invite the legal fraternity who practices in IDT for a *win – win* situation.

C. Buy/ subscribe to the following:

(i) Books on Service Tax by reputed publications.

(ii) Website of ICAI - www.pdicai.org

(iii) Online Portals on Indirect Taxes

(iv) Being part of IDT Net of ICAI

(v) www.cbec.gov.in

(vi) www.exciseandservicetax.com

(vii) Number of CA Yahoo/ google groups

(viii) Sites of leaders in area (articles/ insights)

Importance of Service Tax in the Indian Economy

Services are one of the major contributors to the development of economy. As per the latest Economic Survey, the services sector has made a major contribution to the Indian Economy, i.e., around 64.8% share in Gross Domestic Product (GDP), growing by 5-6% annually, contributing to about quarter of employment.

Tax on services was first introduced in the year 1994, through the insertion of Chapter V in the Finance Act, 1994 and levy was confined to three services. Since then, the Act has been amended every year to bring in more services into the tax net and had 119 services in the tax net till June 30, 2012. The Finance Act, 2012, w.e.f. 1st July, 2012 has introduced comprehensive approach for levy of service tax to tax services based on what is popularly known as *"Negative List of Services"*. It means, if any activity meets the characteristics of a *"service"*, it is taxable unless specified in the negative list or otherwise exempted by the mega exemption notification (presently there are 39 items in the exemption list). The negative list comprises of 17 class of services which are listed in the new section 66D of the Finance Act.

The Central Board of Excise & Customs (CBEC), Department of Revenue, Ministry of Finance, deals with the task of formulation of policy concerning levy and collection of Service Tax. The CBEC is assisted by the Directorate of Service Tax located at Mumbai. There are six Commissionerates located at metropolitan cities of Delhi, Mumbai, Kolkata, Chennai, Ahmadabad and Bangalore which deal exclusively with work related to Service Tax.

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 the Act. This comes along with the power to grant exemptions from Service Tax under Section 93 of the Act.

Definition of Service and its Taxability & 'Declared Service'

What is Service?

Prior to Finance Act, 2012, the word "*service*" was not defined under service tax law. The government can deem any activity or transaction to be a service. One would have to go by the dictionary meaning of the term "service". Black's Law Dictionary defines the term "*service*" as *"an intangible commodity in the form of human effort such as use of labour, skill or knowledge for the benefit of another"*. One of the meanings given by Webster's dictionary, *"performance of any duties or work for another; helpful or professional activity"*. Where there is no service, there would be no liability and a transaction cannot be deemed to be one involving a service in the absence of service. But what is not a service is not easy to determine. These meanings only provide guidance as to what could probably be the meaning of the word '*service'* under this tax legislation.

The Finance Act, 2012, has for the first time introduced the definition of term "*service*" which is very wide and covers not only the activities which are considered as service on common parlance, but also activities beyond the same.

The terms "*service*" has been defined in clause (44) of the section 65B 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 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.*

Basically it covers-

(a) any activity

(b) carried out by a person for another

(c) for consideration and

(d) includes a declared service.

and provides that 'Service' does not include –

(i) any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner

(ii) deemed sales within the meaning of clause (29A) of Article 366 of the constitution

(iii) a transaction only in money or actionable claim

(iv) any service provided by an employee to an employer in the course of the employment.

(v) fees payable to a court or a tribunal set up under a law for the time being in force

There are four explanations (i.e., Explanation 1, 1A, 2 and 3) appended to the definition of 'service' which are dealt with later.

On perusal of the above statutory definition, the service tax would be applicable ON ANY ACTIVITY done for a consideration other than the specific exclusions. In the earlier system, only the services specified in clause (105) of section 65 of the Finance Act, 1994 were taxed. In the new system, all services, other than services specified in the negative list, which are provided in the taxable territory, are taxed.

With the coming into force of the new provisions, the earlier provisions contained in Sections 65, 65A, 66, 66A, will cease to apply but will remain relevant in respect of services provided prior to the coming into force of the new provisions.

The definition more or less implies that 'service' covers all the transaction, which are not subjected to any tax so far *viz.,* Central Excise, Value Added Tax, Stamp Duty etc., and includes a declared service.

Explanation to Definition of '*Service'*

There are four explanations appended to the definition of 'service'. These are as under:

- Explanation 1, clarifies that 'service' does not cover functions or duties performed by Members of Parliament, State Legislatures, Panchayat, Municipalities or any other local authority, OR any person who holds any post in pursuance of the provisions of the Constitution OR any person as a Chairperson or a Member or a Director in a body

established by the Central or State Governments or local authority and who is not deemed as an employee.

- Explanation 1A, clarifies 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 2, creates two exceptions, by way of a deeming provision, to the general rule that only services provided by a person to another are taxable. As per these deeming provisions, an unincorporated association or body o persons and members thereof are also deemed as separate person. Further, establishment of a person located in taxable territory and establishment of such person located in non-taxable territory are deemed to be establishments of distinct persons.
- Explanation 3, explains that a branch or an agency of a person through which the person carries out business is also an establishment of such person.

The purpose of these deeming explanations seems to provide for tax on services between such persons, as are deemed to be separate persons. For instance, services provided by a club to its members and services provided by the branch office of a company, located outside India or to the head office in India would be taxable provided other conditions relating to taxability of service are satisfied.

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.

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 do exist a 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. To set at rest any doubt about the validity of a transaction to be considered as service, the authority has 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 competence of the Union to levy 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 since declaration to such an extent is made.

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

1. renting of immovable property;
2. 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;
3. temporary transfer or permitting the use or enjoyment of any intellectual property right;
4. development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;
5. agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
6. transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
7. activities in relation to delivery of goods on hire purchase or any system of payment by installments;
8. service portion in execution of a works contract;
9. 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.

It is clarified that they are amply covered by the definition of service but have been specified with a view to remove any ambiguity and to ensure uniform application of law all over the country.

Levy and Collection

The Finance Act, 2012, provides that the service tax would be chargeable on those services which are provided within the taxable territory. Taxable territory has been defined in sub-section 52 of Section 65B. It means the territory to which the provisions of Chapter V of the Finance Act, 1994 apply i.e., the whole of India excluding the state of Jammu and Kashmir.

The Levy of service tax would be only on the taxable services provided in the taxable territory and hence the service provided outside the taxable territory would be out of the service tax net. With this it would be critical to identify when the service is deemed to be provided outside India, which can be determined based on the Place of Provision of Service Rules, 2012.

The rule determines the place where a service shall be deemed to be provided. Its taxability will be determined based on the location of its provision. The 'Place of Provision of Services Rules, 2012' has replaced the 'Export of Services, Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006.

Concept of Negative List

Negative List

Post July 1, 2012, there is change in the way services are taxed. Taxation is 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 covers all the service providers.

Analyses of the Negative List of Services

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 or passengers;

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

What is the meaning of Government?

As '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 (U.T). '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 section 65B of Finance Act 1994, as amended, 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.

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 organisation.

4. Services Relating to Agriculture or Agriculture Produce

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 omitted w.e.f. 10.5.2013].*
- supply of farm labour;

- 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 or 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, activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry are 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.

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.

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 the 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.

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 Finance Act 1994, as amended, a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or the Medicinal or Toilet Preparations (Excise Duties) Act,1955 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 for the time being in force.

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 and includes processes on which duties of excise are leviable under the Medicinal or Toilet Preparations (Excise Duties) Act, 1955. [w.e.f. 10.5.2013].

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, to which "Nil" rate of duty is applicable.

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. 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 broadcasted on radio or television.	Sale of space for advertisement in print media.
Sale of time slot by a broadcasting organisation.	Sale of space for advertisement in bill boards, public places, buildings, conveyances, cell phones, automated teller machines, internet.
	Aerial advertising

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 an 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 Finance Act 1994 as amended. 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 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?

This will not be 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 is a sale of space or time for advertisement. As such, it is covered by the above entry and hence not 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.

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

What are the services which are covered?

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, are covered in this entry.

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, and 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 Finance Act, 1994 as amended, 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.

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 ₹ 5,000/- on a horse in a race event. The race club has only paid betting tax to the State Government on ₹ 3,000/- and ₹ 1,000/- is charged for the entry into the race and balance transferred to a common pool account from which the prize amount is awarded. Is the 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 ₹ 5,000/- 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 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 is therefore, 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 Finance Act 1994, as amended, as *an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic films, circus, concerts, sporting events, pageants, award functions, dance, musical, theatrical performances including drama, ballets or any such event or programme.*

What is 'Amusement Facility'?

'Amusement Facility' has been defined in the Finance Act 1994, as amended, *'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'*.

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.

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

accommodation services. Is0 the entire amount received by Z Ltd. is liable to service tax?

Yes, it is 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 of the Finance Act, 1994 as amended, 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 mean 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

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, it would not be liable to service tax.

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. However it could be kept out of service tax levy as it is sale of goods.

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 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], 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 or State Council for Vocational Training, run by a person registered with the Directorate General of Employment and Training, Ministry of Labour and Employment,; [a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India]. [omitted w.e.f. 10.5.2013].

Whether services provided by international schools are also covered?

Yes, services provided by international schools are not liable to service tax 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.

Are 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 Finance Act, 1994 as amended. 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 of services.

Are private tuitions covered in the entry relating to education?

No, as per the Education Guide issued by CBEC, private tuitions are not covered by the above entry. But the benefit of threshold exemption can be availed of by private tutors.

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 of 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 services 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 Finance Act 1994, as amended, it is liable to be treated as a course which attracts the highest liability of service tax.

Are services for conducting admission tests for colleges exempt?

Yes, in case the educational institutions are providing qualification recognized by law for the time being in force.

Is 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.

Is 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, usee 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

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 Finance Act 1994, as amended. 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 the consideration for advancing such loans or advances are represented by way of interest.
- Corporate deposits to the extent the consideration for advancing such loans or advances is represented by way of interest or discount.

The Invoice discounting is covered only to the extent consideration, 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:

- 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 a cause of dispute as the above list is not complete within each segment.

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 are 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 pertaining to transport of 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 an aircraft or a 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.) Possible omissions such as goods carrying tempos could be cause of dispute.

Are GTA services excluded?

All services provided by goods transport agencies are excluded from the negative list. However, there are separate exemptions *vide Notification No. 25/ 2012 dated 20th June, 2012,* available to the services provided by the goods transport agency. These are services by way of transportation of :

- fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
- 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;

However, *vide Notification No. 3/2013 dated 01.03.2013 w.e.f 1.04.2013*, the scope of exemption for Goods Transport Agencies has been modified and the same is as under :

"Service provided by a goods transport agency by way of transportation of:

- *agricultural produce;*
- *goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or*

- *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; or*
- *foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;*
- *chemical fertilizer and oilcakes;*
- *newspaper or magazines registered with the Registrar of Newspapers;*
- *relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or*
- *defence or military equipments;*

The provisions relating to reverse charge, that 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

Is 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.

Exemptions under Service Tax

What is the 'Small Service Provider Exemption' & How is it computed?

In legal parlance there is nothing called as "small service provider". The said words have been used to put at comfort those service providers whose turnover do not exceed the limit prescribed in the Notification granting general exemption. The exemption is optional so that even such small service providers can opt to pay tax instead of availing the benefit of exemption. In case of such option being exercised, the service provider would get the benefit of CENVAT Credit of duties and taxes paid on capital goods, inputs and input services. By this mechanism the CENVAT credit can get passed on whereby the basic cost of output service would get reduced if the service receiver is eligible to avail CENVAT credit.

The option as to non-availment of such small scale exemption and opting to pay tax once exercised, cannot be withdrawn during the remaining part of that particular financial year.

The said exemption was governed by the *Notification No. 6/2005-ST dated 01.03.2005 (under the positive list regime)*, wherein it gives exemption for service providers who provide taxable services of a value not exceeding the specified limit (presently ₹ 10 Lakhs) in the previous financial year. The exemption that would be available is the amount of taxable value received in the current financial year upto the specified limit mentioned above. It is relevant to note that for considering the eligibility, the value of taxable services provided is to be considered, whereas for the purpose of availing exemption it is the value of taxable services received in the current financial year. However, *Notification No.33/2012-ST dated 20.6.2012*, effective from 1st July, 2012, has amended the provision relating to small scale exemption recognizing that the aggregate value up to ₹ 10 Lakhs will be in terms of invoices issued/to be issued for taxable services and not payments received.

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 20.06.2003. 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 sale 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.

However, this notification has been rescinded with effect from July 1, 2012 *vide Notification No.34/2012-ST dated 20-06-2012* i.e. from the date of operation of the 'negative list'.

Notification No. 12/2003-ST dated 01.06.2003 has been withdrawn

Notification 12/2003 – ST dated 01.06.2003, exempted so much of the value of all taxable services as was equal to the value of goods and materials sold by the service provider to the service recipient subject to condition that there is documentary proof of such value of goods and materials. Under the negative list scheme, transactions that involve transfer of title in goods are excluded. Therefore, if goods are being sold by a service provider under a distinct and a separate contract then sale of such goods is excluded from the definition of service. If it is a 'composite contract' and dominant nature of the contract is that of provision of service then value of goods cannot be excluded and if the dominant nature is sale of goods then the contract is not taxable as service. In view of the above *Notification No. 12/2003-ST* has been - rescinded *via. Notification No. 34/2012-ST dated 20/6/2012* w.e.f 1st July, 2012. However, the amendment in the Valuation Rules ensures that the deduction for value of goods sold in such contract, if ascertainable, would be allowed.

Other Exemptions

Till 30th June, 2012, taxable services as mentioned in Section 65(105) were subject to service tax. The Government from time to time had been issuing certain notifications exempting the whole or a part of certain services, or certain service providers from the gamut of service tax.

With the new form of taxation notified [from July 1, 2012], the Government has for ease of governance, included certain services in Section 66D of the Finance Act, 1994, as amended, popularly called as negative list, which is fully exempt from service tax. Apart from the negative list, the Government has also issued notifications, which exempt certain services or certain class of service providers from payment of service tax..

In the opinion of the Hon'ble Finance Minister, these exemptions are replacement of the existing 88 exemptions, of course merging some of the existing notifications into one revised notification.

However, to explain the new concept, the TRU has also issued a 240 pages clarificatory note with a clear *"disclaimer"* which depicts its understanding and not the understanding of law, for which the tax payer is to refer to the law itself.

The Supreme Court has also in the past held that Circulars not in line with law are non-existent in law. [Ratan Melting Wires]

Gist of other Exemptions:

A. Small Scale Exemption

Service providers whose aggregate value of taxable services do not exceed rupees ten lakhs in the preceeding financial year are eligible to avail full exemption from payment of service tax vide Notification No.6/2005 as amended by *Notification No.33/2012-ST dated 20-06-2012*. However service providers who provide services using the brand name of another person and service receivers who are liable to discharge the service tax liability under the reverse/joint charge mechanism are not eligible for any exemption.

B. Exporters/ SEZ

- Notification No. 31/2012-ST dated 20.06.2012 effective from 01.07.2012 exempts transportation of export goods by Goods Transport Agency in a goods carriage received by an exporter for transport of the said goods directly from –
  - any container freight station or inland container depot to the port or airport, from where the goods are exported;
  - his place of removal, to an inland container depot, a container freight station, a port or airport, from where the goods are exported.
- Taxable services received by an exporter of goods from a commission agent engaged by him outside India is exempted from service tax upto a value of ten per cent of the free on board value of export goods for which the said service has been used subject to conditions specified in Notification no. 42/2012-ST dated 29.06.2012 effective from 01.07.2012.
- Refund of service tax paid on certain specified taxable services received by an exporter of goods and used for export of goods, subject to certain specified conditions.
- Taxable services, received by a unit located in a Special Economic Zone or Developer of SEZ for the authorized operations subject to conditions specified in Notification No. 40/2012-ST dated 20.06.2012 effective from 01.07.2012. The same is rescinded by notification no.12/2013-ST. The notification no.12/2013-ST now exempts the taxable services which are received and used by SEZ unit or

developer from service tax subject to conditions and procedure specified thereunder.

C. Import of Technology

Taxable service involving import of technology, from so much of service tax, as is equivalent to the extent of amount of cess payable on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986 subject to conditions specified in Notification No. 14/2012-ST dated 17.03.2012 effective from 01.07.2012.

D. Services to Foreign Diplomatic Mission

Taxable services provided 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 subject to conditions set out in notification 27/2012-ST.

E. Services by TBI or STEP

Taxable 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 subject to conditions specified in Notification no. 32/2012-ST dated 20.06.2012 effective from 01.07.2012.

F. Exemption of House tax paid under renting of an Immovable Property service

Taxable service of renting of an immovable property, from so much of the service tax leviable thereon, as is in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies subject to the condition specified in Notification no. 29/2012-ST dated 20.06.2012 effective from 01.07.2012.

G. Abatement

The abatement is on gross amount charged and service tax is applicable on percentage specified in column (3) of the following table, subject to the relevant conditions specified in the column (4) of the said Table:

Sl. No.	Description of taxable service	Percent-age	Conditions
(1)	(2)	(3)	(4)
1	Services in relation to financial leasing including hire purchase	10	Nil.

Sl. No.	Description of taxable service	Percent-age	Conditions
(1)	(2)	(3)	(4)
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 residential or lodging purposes.	60	Same as above.
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.

Sl. No.	Description of taxable service	Percent-age	Conditions
(1)	(2)	(3)	(4)
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.

Sl. No.	Description of taxable service	Percent-age	Conditions
(1)	(2)	(3)	(4)
	(iii) any services other than specified at (i) and (ii) above.	40	(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 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,- (a) For a residential unit satisfying both the following conditions, namely:- (i) the carpet area of the unit is less than 2000 square feet; and (ii) the amount charged for the unit is less than rupees one crore; (b) for other than the (a) above.	25 30	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004; (ii) The value of land is included in the amount charged from the service receiver.

Explanation

A. For the purposes of exemption at Serial number 1 –

(i) The amount charged shall be an amount, forming or representing as interest, i.e., the difference between the installments paid towards repayment of the lease amount and the principal amount contained in such installments;

(ii) the exemption shall not apply to an amount, other than an amount forming or representing as interest, charged by the service provider such as lease management fee, processing fee, documentation charges and administrative fee, which shall be added to the amount calculated in terms of (i) above.

B. For the purposes of exemption at serial number 4 –

The amount charged shall be 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) and whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services supplied to the service provider, 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.

C. For the purposes of exemption at serial number 12 –

The amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract, after deducting:

(i) the amount charged for such goods or services supplied to the service provider, 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.

2. For the purposes of this notification, unless the context otherwise requires:

(a) "*chit*" means a transaction whether called chit, chit fund, chitty, kuri, or by whatever name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to a prize amount,

(b) *"package tour"* means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour,

(c) *"tour operator"* means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.

The full text of the abatements is available in the Notification No. 26/2012-ST dated 20.6.2012 which is in force since 1st July, 2012

Tax Liability under Reverse Charge Mechanism and Joint Charge Mechanism

Reverse Charge Mechanism and Joint Charge Mechanism

- Prior to the Finance Act, 2012, the Service tax law recognised the concept of *"Service Provider"* and *"Service Receiver"*. Generally tax is to be paid by service provider, However, in respect of taxable services notified under Section 68(2) tax is payable by the prescribed person. The services notified under Section (68)(2) are :

  (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

  (ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is any of the following, they will be liable to pay service tax, in any other case it will be paid by the GTA:

    (a) any factory registered under or governed by the Factories Act, 1948;

    (b) 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;

    (c) any co-operative society established by or under any law;

    (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under;

    (e) any body corporate established, by or under any law; or

    (f) any partnership firm whether registered or not under any law including association of persons;

  (iii) provided or agreed to be provided by way of sponsorship, to any body corporate or partnership firm located in the taxable territory;

  (iv) provided or agreed to be provided by an arbitral tribunal or an individual advocate or a firm of advocates or the support service provided or agreed to be provided by Government or local authority, to any business entity located in the taxable territory other than renting of immoveable property and specified services;

  (iva) provided or agreed to be provided by a director of a company to the said company;

(v) provided or agreed to be provided by way of renting or hiring any motor vehicle designed to carry passenger or supply of manpower for any purpose or security services or works contract by specified persons to business entity body corporate;

(vi) services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory;

- A new reverse charge mechanism has also been introduced in which both the service provider and service receiver are considered as persons liable to pay the tax on notified taxable services and to the extent specified against each one of them. The scheme is being introduced for four services where the service provider is either an individual or a firm including association of person and the recipient is a body corporate. The four services and the portion of tax payable are as follows:

Sl. No.	Description of service	Service recipient	Service provider
1.	Hiring of a motor vehicle designed to carry passengers: (a) with abatement (b) without abatement	 100% 40%	 NIL 60%
2.	Supply of manpower for any purpose or security services	75%	25%
3.	Works contract service	50%	50%

The provisions of reverse charge and joint charge, have been tabulated in the below given table along with their date of origin from which they are in reverse charge with effective tax rates to be discharged by service provider or receiver.

SL. No.	Description of a service	Service Provider	Service Receiver
1.	Services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road.	Nil	100% (3.09% Tax)
2.	Services provided or agreed to be provided by way of sponsorship.	Nil	100% (12.36%

SL. No.	Description of a service	Service Provider	Service Receiver
			Tax)
3.	Services provided or agreed to be provided by an arbitral tribunal.	Nil	100% (12.36% Tax)
4.	Services provided or agreed to be provided by individual advocate or a firm by way of legal services.	Nil	100% (12.36% Tax)
5.	Services provided or agreed to be provided by a director to a company.	Nil	100% (12.36% Tax)
6.	Services provided or agreed to be provided by Government or local authority by way of support services excluding – (1) Renting of Immovable Property, and (2) Service by Government or a local authority excluding the following service to the extent they are not covered elsewhere- (i) Services by Department of Post by way of Speed Post, Express Parcel Post, Life Insurance and Agency Services; (ii) Services in relation to aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) Transportation of goods or passengers.	Nil	100% (12.36% Tax)
7.	(a) Services provided or agreed to be	Nil	100%

SL. No.	Description of a service	Service Provider	Service Receiver
	provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business. (Rent-a-cab service).		(4.944% Tax)
	(b) Services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in the similar line of business. (Rent-a-cab service)	60% (7.416% Tax)	40% (4.944% Tax)
8.	Services provided or agreed to be provided by way of supply of manpower.	25% (3.09% Tax)	75% (9.27% Tax)
9.	Services provided or agreed to be provided by way of security services.	25% (3.09% Tax)	75% (9.27% Tax)
10.	Services provided or agreed to be provided in service portion on execution of works contract in relation to - Only on labour charges: 100% Original work on total amount: 40% Repairs and Maintenance of any goods on total amount: 70% Any other case on total amount: 60%	50% (6.18% Tax) (2.472% Tax) (4.326% Tax) (3.708% Tax)	50% (6.18% Tax) (2.472% Tax) (4.326% Tax) (3.708% Tax)

SL. No.	Description of a service	Service Provider	Service Receiver
11.	Services provided or agreed to be provided by any person who is located in a non taxable territory and received by any person located in the taxable territory.	Nil	100% (12.36% Tax)
12.	Services provided or agreed to be provided by an insurance agent to any person carrying on insurance business.	Nil	100% (12.36% Tax)

General Points:

1. The recipient of service is not eligible for basic exemption of ₹ 10 lakh.
2. The recipient of service has to pay his part of tax, even if the specified service provider is eligible for basic exemption.
3. The recipient of service shall not discharge service tax liability through CENVAT Credit.
4. The point of taxation for recipient is date of payment if bill/invoice is paid within 6 months from its date, otherwise liability arises from date of bill/ invoice [in which case interest for delayed payment has to be made].
5. The recipient of service and provider of service can adopt different valuation system for payment of service tax on works contract services.
6. The recipient has to discharge service tax under reverse charge under specific taxable services category as applicable.

Point of Taxation

- To align with GST, the concept of accrual basis like in VAT & Excise, has been introduced in service tax *vide* the Finance Act, 2011 with introduction of Point of Taxation Rules *vide Notification No.18/2011 – ST dated 1st March, 2011*, whereby the payment of services tax shall be on accrual basis instead of receipt basis.
- Point of Taxation (i.e., Point of time) when a service shall be deemed to have been provided would be:

  The time when the invoice for the service provided or to be provided is issued.

  If invoice is issued within prescribed period of 30 (45 for banks) days from the date of completion of service then

  - Date of Invoice
  - Date of Payment (including advance) whichever is earlier

  If invoice is not issued within the prescribed period

  - Date of completion of the provision of service or payment (including advance), whichever is earlier.
- Service tax would be payable irrespective of the method of accounting followed.
- Rule 4(7) of the CENVAT Credit Rules, 2004 has been amended providing that credit of service tax is to be taken on receipt of invoice. However, if the payment is not made to the supplier within three months, then such CENVAT Credit will have to be reversed and will be again allowed only after its payment is made.

The details of liability of service tax have to be recorded in the books of account by the service provider or any other person who is liable to pay service tax. The accounting entries are mentioned in *Appendix 2*.

Amendments in Point of Taxation Rules, 2011

- The definition of "continuous supply of services" under Rule 2(c) is amended whereby continuous supply of service means any service which is provided, or to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the obligation for payment periodically or from time to time or where the Central Government, by a notification in the official gazette prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

- The time period for issuance of invoice is being increased to 30 days ordinarily and 45 days for banks and financial institutions;
- In case of export of services, the point of taxation is the date of receipt of payment;
- In case of exporters, the period extended by the Reserve Bank of India is now explicitly included in the period for which the tax is allowed to be deferred;
- In case of a new levy, no tax is chargeable on services where payment has been received and invoice issued within a period of 14 days before such became taxable. To provide certainty, clause (b) is being amended to specify that invoice should be issued within 14 days of the date of the new levy;
- The *"date of payment"* could be a subject of litigation particularly when effective rate changes. In normal circumstances, this date shall be the earlier of the dates of entry into books of accounts or actual credit in the bank account (when applicable). However, when there is change in effective rate of tax or a new levy between the said two dates, the date of payment shall be the date of actual credit in the bank account, if the amount is credited through a banking instrument more than four working days after the date of such change;
- As a measure of added facilitation, an option has been provided to determine the point of taxation in respect of small advances up to ₹ 1000, in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment. Such provision is expected to address the accounting problems faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers;
- A residual rule has been made by way of best judgment to handle situations where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine POT;
- Rule 8A has been inserted whereby the powers are granted to the Central Excise Officer to determine the point of taxation to the best of his judgment in cases where the point of taxation cannot be determined as per POT Rules, 2011 as the date of invoice or the date of payment or both are not available. The CEO to give the concerned person opportunity of being heard before passing such order in writing.
- These changes have come into effect from April 1, 2012.

Impact of Changes in Tax Rates on Point of Taxation

- The tax rate is changed from 10% to 12% w.e.f. 01.04.2012. Considering the point of taxation, this change in the increased rate would apply to the following cases:
    - Where the invoice is raised and payment is received on or after 1st April 2012

- Where the service is completed and payment is received on or after 1st April 2012
- Where the service is completed and invoice is raised on or after 1st April 2012

- In case of eight categories of service providers (individuals and partnership firms) which also cover Practicing Chartered Accountants, the increased rate of tax is applicable to all the payments received on or after 1st April 2012 irrespective of the fact when the invoice was raised or services were provided or completed. CBEC has issued a clarification in this regard *vide its Circular No. 158/9/2012-ST dated 8th May 2012*, according to which, for all the amounts received by such professionals on or after *1st April 2012* (covering invoice issued after point of taxation became applicable) the rate of tax would be 12.36% irrespective of the fact that the tax is charged at 10.3%. The Hon'ble High Court of Delhi in the case ***Delhi Chartered Accountants Society (Regd.) vs. UOI, 2013(29)STR461(Del.)*** has held that this amendment against law.

Payment of Tax in Case of New Services

- Where a service is taxed for the first time, no tax is payable to extent invoice issued and payment received before service became taxable;
- Further no tax payable if the payment was received before service became taxable and invoice issued within 14 days of the date when service became taxable.
- Consequently, the facility given to issue invoice within 30 days/45 days (as applicable) not given to new services. This could be prompted by the fact that higher the times given for issue of invoice, higher will be the scope of fraud.

Special Provisions for Payment of Tax on Receipt Basis Withdrawn for Professionals

Eight categories of service providers (individuals and partnership firms) which also covered chartered accountants were allowed to pay tax based on receipt. But, w.e.f. 01.04.2012, that facility has been removed and the provisions applicable to all service providers have been made applicable even for such professionals.

However, the benefit available to individuals and firms to determine POT on the basis of date of payment for eight specified services is being extended to all services in a slightly modified form. Now individuals and partnership firms (including limited liability partnership) whose aggregate value of taxable services provided from all the registered premises is ₹ 50 lacs or less in the previous financial year are granted an option to pay service tax on receipt basis on taxable services upto an amount of ₹ 50 lacs in the current financial year. Beyond ₹ 50 lacs, tax has to be paid on billing or receiving (including advances), whichever is earlier.

Statutory Compliances

Registration

- Every person providing a taxable service and liable to pay service tax is required to register with the Central Excise/ Service Tax department.
- Application for registration is required to be made in Form ST-1 to the jurisdictional superintendent of Central Excise within 30 days of levy of service tax on such service or, in case of an existing taxable service, within 30 days of the commencement of provision of such service. A person providing more than one taxable service from a single premises is required to take only one single registration. He should indicate all taxable services provided by him in Form ST-1.
- Also, the following two categories of persons have been identified as 'Special Category of Persons for taking registration:

  (i) Input Service Distributor

  (ii) Any provider of taxable service whose 'aggregate value of taxable service' in a financial year exceeds nine lakh rupees.
- *Centralised Registration*: Where an assessee (i) as service provider is providing a taxable service from more than one premises or offices; or (ii) as service receiver is receiving a taxable service in more than one premises or offices and has centralized billing or accounting systems in respect of such service and such centralized billing or accounting systems are located in one or more premises or offices, then at his option, he may register such premises or offices where such centralized billing or accounting systems are located. In such cases, the registration is granted by the Commissioner of Central Excise having the jurisdiction over the premises or offices from where centralized billing or accounting is done.
- Present Procedure for registration

  ✓ Application for registration is to be made online (website www.aces.gov.in in Form ST -1 to the Superintendent of Central Excise).

  ✓ The form shall be filed online with all the required details and submitted online itself.

  ✓ A print of the form submitted online shall be taken and alongwith the documents as specified, shall be submitted to the department at the concerned Commissionerate.

- ✓ The registration certificate would be granted by the department, in Form ST-2, within seven days of filing of an application, complete and properly filled up. In case registration certificate is not issued within seven days, the registration is deemed to have been granted.
- ✓ A single registration is sufficient even when an assessee is providing more than one taxable services. However, he has to mention all the services being provided by him in the application. Also, w.e.f. 1st July, 2012 the term service has been defined and the various categories as adopted in selective approach of service tax have been omitted. As a result of this, all new registrations were to be taken under the head *"Other than in the Negative List"*. However, *Notification No. 48/2012 dated 20.11.2012* restored all the accounting codes due to which new registrations and old registrations that were amended after 01.07.2012 have to be amended once again since service specific registration has been once again made mandatory.
- ✓ Where there is a change in any information or detail furnished by an assessee in Form ST-1 at the time of obtaining registration or where he intends to furnish any additional information or detail, such change or information or details shall be intimated, in writing, by the assessee, to the jurisdictional AC/ DC of Central Excise, as the case may be, within a period of thirty days of such change. This could be done online as well.
- ✓ In case of transfer of business, transferee to obtain a fresh certificate of registration.
- ✓ Registration certificate to be immediately surrendered online to Superintendent of Central Excise by assessee who ceases to provide taxable service.
- ✓ Superintendent to cancel the registration certificate after ensuring that the assessee has paid all dues to the Central Government.
- ✓ Documents required for registration :
    - o Self certified copy of PAN, (where allotment is pending, copy of the application for PAN may be given)
    - o Copy of MOA/AOA in case of Companies
    - o Copy of Board Resolution in case of Companies
    - o Copy of Lease deed/Rental agreement of the premises
    - o A brief technical write up on the services provided
    - o Partnership deed in case of Partnership firm

- Self attested copy of address proof of partner/proprietor/director or authorised signatory

W.e.f from the Finance Act, 2013

Delay in registration could attract a penalty under Section 77(1) (a), which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance; . The penalty under section 77 is not automatic. If the assessee can prove that there was a reasonable cause for the delay in registration, the penalty could be waived under section 80.

CBEC vide Order No. 2/2011-ST dated 13th December, 2011 has specified the documents required to be submitted along with ST-1 application under Rule 4(1) of The Service Tax Rules, 1994:

(a) Copy of PAN Card

(b) Proof of residence

(c) Constitution of the applicant

(d) Power of attorney in respect of authorised person

The said documents are required to be submitted to the service tax department within 15 days from the date of online filing of ST-1 & the time limit of 7 days for issuance of Service Tax registration certificate as prescribed in Rule 4(5) of The Service Tax Rules, 1994 would be applicable from the date of submission of the complete application including above documents.

Issue of Invoice and Records

- Prior to 1st April, 2012, every taxable service provider was required to issue a document (i.e. invoice, bill or challan) within 14 days from either the date of completion of provision of service or receipt of any service charges (whichever is earlier). W.e.f. 1st April, 2012, this time limit has been increased to 30 days ordinarily and 45 days in case of banks and financial institutions including NBFCs.
- Such document should be serially numbered and should contain:
  - ✓ The name, address and registration number of the service provider.
  - ✓ The name and address of the service receiver.
  - ✓ Date of raising of invoice.
  - ✓ Description and value of taxable service provided.

- ✓ The amount of ST and Education cess/SHE Cess charged on such service.
- ✓ Breakup of the amount charged towards the service.
- ✓ Details as to exemption being claimed with reference to the concerned notification.
- ✓ The Education Cess and SHE Cess to be shown separately in the invoice in order to comply with the requirements of CENVAT Credit Rules to facilitate the availment of CENVAT credits by recipient- para 5.1 of Circular No.97/8/2007-ST dated 23.8.2007.

- In case any payment towards value of service is not received and such taxable service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically, taxable service provider was required to issue an invoice/ bill/ challan within a period not later than 14 days from end of such period. The time limit has been extended to 30 days [extended to 45 days in case of a banking company or financial institution including NBFC) *vide* Notification No.3/2012-ST dated 17th March, 2012.
- Besides issuing invoice or bill or challan containing prescribed particulars, Rule-4A(1) requires Goods Transport Agency (other than GTAs whose services are wholly exempted in relation to transport of goods by road) to issue serially numbered consignment note containing:
  - (i) name of consignor and consignee;
  - (ii) registration number of goods carriage in which goods are transported;
  - (iii) details of goods transported;
  - (iv) details of place of origin and destination;
  - (v) person liable for paying service tax whether consignor, consignee or GTA.
- Rule 4A(2) requires, every 'input service distributor to issue serially numbered invoice or bill or challan duly signed by him or person authorized by him containing following details:
  - (i) Name, address, registration number, serial number and date of invoice or bill or challan of input service provider;
  - (ii) Name & address of input service distributor;
  - (iii) Name and address of recipient of credit;
  - (iv) Amount of credit distributed.

- W.e.f 1st April,2012 no invoice is required to be issued where the service provider receives an amount upto ₹ 1,000/- in excess of the amount indicated in the invoice and such service provider has determined the point of taxation as per the Point of Taxation Rules, 2011.
- Record in service tax is to be kept as per Rule – 5(1) of the service tax rules, 1994. Following Records can be kept in the computerized format as follows:

  (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to :

  - providing of any service, whether taxable or exempted;
  - receipt or procurement of input services and payment for such input services;
  - receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
  - other activities, such as manufacture and sale of goods, if any.

  (ii) all other financial records maintained by him in the normal course of business

- At the time of filing the first return, assessee should furnish the list as given above in duplicate to Superintendent of Central Excise. However, this is not practical after returns are required to be submitted electronically. This letter can be submitted to range and acknowledgement of receipt taken on same. Alternatively, send by registered post AD.

Payment of Service Tax

- Service tax has been payable on receipt basis i.e., on the receipt of payment from customer or on the receipt of advance, whichever is earlier. However, w.e.f. 01.04.2011, Point of Taxation of service tax has been shifted from receipt basis to issuance of invoice or receipt of payment, whichever is earlier. It may be noted that during the period between April 2011 to June 2011, assessee were provided an option to follow either receipt basis or accrual basis for payment of service tax.
- In terms of rule 6 of the Rules read with section 68 of the Act, the service tax is required to be *paid on monthly basis by all service taxpayers, other than individuals or proprietary /partnership concerns, who are required to pay service tax on quarterly basis.*
- Service tax liability for a particular month or quarter is to be deposited by the 5th day of the month following the month or quarter for which service tax is paid. However, for the month/quarter ending March, the payment is required to be made by the 31st March itself by all taxpayers.
- In case service tax is to be paid through e-payment then it can be deposited on 6th of next month/ quarter as the case may be. From 1st April, 2010, e-payment of service tax has been made mandatory for the assessees who have paid service tax of ₹ 10 Lakh (Cash+CENVAT) or above during the last financial year.
- If the assessee deposits the amount of tax liable to be paid, by cheque, then the date of presentation of the cheque to the designated bank would be treated as the date of payment of service tax.
- The amount shall be paid into the designated bank account using the form GAR 7 which is to be filled up. The amounts are to be rounded off to the nearest rupee. Separate accounting codes have been notified service wise for service tax, education cess, secondary and higher education cess, interest, penalties etc.
- In case excess payment of service tax has been made due to arithmetical error for a particular month/ quarter, the same can be adjusted in the next period.
- In case advance payment is received for a service which is not taxable at the time of receipt of payment but becomes taxable during the course of provision of services, such payment would have to be apportioned appropriately between the two periods and only that part of service provided on or after the date service became taxable, is liable for service tax.

- When payment is received in advance for service to be provided but subsequently the services are not actually provided and the consideration and service tax for the same is refunded back to the service recipient, then service tax paid on such advance received is eligible for adjustment against other liabilities of service tax for subsequent period. W.e.f. 1st April, 2011 Rule 6(3) of Service Tax Rules 1994 was amended, whereby excess service tax paid by the service provider in respect of services not so provided or where excess payment is made on account of renegotiation of Invoice due to deficient provision of service, or any term of contract either wholly or partially, such excess payment is allowed to be adjusted against his service tax liability for subsequent period subject to conditions below:

  (i) Assessee has refunded the payment or part thereof, along with service tax thereon to the receiver of service; or

  (ii) Assessee has issued a credit note for value of service not so provided.

- Application to be made to Central Excise Officer (CEO) to make provisional assessment of tax, when assessee is unable to correctly estimate actual tax payable. The assessee is required to file a statement in form ST-3A at the time of filing return, giving details of difference between service tax deposited and service tax liable to be paid for each month/quarter.

- With the introduction of Point of Taxation Rules, 2011 assessee should be careful while determining their service tax liability, since liability would arise on raising of invoice only or receipt of advance as the case may be.

- W.e.f. 1st April, 2012, Rule 2(cd) is inserted in Service Tax Rules, 1994 so as to provide that "partnership firm" includes a "limited liability partnership".

Forth proviso to Rule 6(1) has been inserted whereby individuals and partnership firms (including limited liability partnership) whose aggregate value of taxable services provided from all the registered premises is ₹ 50 lacs or less in the previous financial year are granted an option to pay service tax on receipt basis on taxable services upto an amount of ₹ 50 lacs in the current financial year. Beyond ₹ 50 lacs, tax has to be paid on billing or receiving (including advances), whichever is earlier.

W.e.f. 1st April,2012 Rule 7 of the Point of Taxation Rules, 2011 is amended to omit the reference to eight categories of service providers who were given the facility to pay the service tax on receipt basis.

Liability when Transaction is with Associated Enterprises

- Where the transaction of taxable service is with any associated enterprise, the gross amount charged is equal to 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.

- Service tax is payable when the amount is considered as a expenditure in accounts, even if the amount is not credited to the account of the associated enterprises, but credited to a suspense account or any other account and even if payment is not received.
- In case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.
- At the same time, in case of an input service where the service tax is paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such input service shall be allowed on or after the date on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

Service Tax Payment – Interest

- For delay in payment of service tax which is due and payable, simple interest is charged at the rate of 18% p.a. (From 01.04.2011). However, w.ef. 8th April, 2011, if turnover of the assessee is up to 60 Lakhs during preceding financial year or in any of the financial year covered in the show cause notice, interest is charged at the rate of 15% p.a. The interest is to be calculated for number of days delay i.e. per day basis. Suppose service tax was payable on 5th of May and paid on 17th May, in this case interest is payable for 12 days at the rate 18/15% p.a. calculated on simple interest basis.
- Interest would be charged from the date when service tax is due till the date of payment. In case cheque is presented the date of presentation of cheque would be considered provided cheque is realized.

Service Tax Payment – Penalty

- Moreover as per Sec 76 of the Act, a person who is liable to pay service tax, but fails to pay the same, shall in addition to service tax and interest, pay a penalty of not less than ₹ 100 per day during which such failure continues or at the rate of 1% p.m. of such tax. However, the total amount of penalty payable shall not exceed fifty percent of service tax so payable.

Illustration : Mr. X, an assessee, fails to pay service tax of ₹ 10 lakh rupees payable by the March 5, 2013. Mr. X pays the amount on the March 2013. The default has continued for ten days. The penalty payable by X is computed as follows:—

	₹
1% of the amount of default for 10 days (1/100 x 10,00,000 x 10/31)	3,225.80 or 3,226/-
Penalty calculated @ ₹ 100 per day for 10 days	1,000
Penalty liable to be paid	3,226/-

Filing of Periodical Returns

- Every assessee is required to file online service tax return on a half yearly basis at ACES website in Form ST-3. For the periods from April to September and October to March, it must be filed by the 25th October and 25th April respectively. However, due to the introduction of Negative list from 01.07.2012 the ST-3, return for the 1st half year of financial year 2012-13 were divided into two parts. Due date of filing returns were as follows:

April 2012 to June 2012	25th November, 2012
July 2012 to September 2012	30th April, 2013

  The due date for filing the ST-3 return for the 2nd half year for the period from October 2012 to March 2013 is 31st August, 2013

- An 'Input Service Distributor' is also required to file return in form ST-3.
- An assessee can revise the service tax return within 90 days from the date of filing of return to correct any error, omission or mistake.
- Late fees in case of delay in filing of return:
  - If return is filed after due date then assessee is required to deposit late fees u/s 70(1) of the Act, depending upon the period of delay. According to the provisions of rule 7 Service Tax Rules, 1994 depending upon the period of delay, late fee is payable as under:

Delay in filing of return after due date	Late fees
First 15 days	₹ 500/-
More than 15 days but less than 30 days	₹ 1000/-
More than 30 days	₹ 1000/- + 100 per day beyond 30 days

  - The late fee can be upto a maximum of ₹ 20,000/-.

Where the gross amount of service tax payable is Nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the late fee.

Refunds of Service Tax

How does the refund work?

The refund could be of service tax paid in excess or even of CENVAT credits which are eligible for refund in accordance with Rule 5 of CENVAT Credit Rules 2004. While the refund claim on CENVAT credits accumulated as per Rule 5 of CCR 2004 would be as per the procedure set out in *Notification 27/2012 CE (NT) dated 18.06.2012*, which enable the exporters to claim refund of the CENVAT credit of input or input services used in or in relation to manufacture and of input services used for providing output service. Finance Act 2012 has introduced a simplified scheme for refunds by substituting the entire Rule 5 of CCR, 2004 *vide notification no. 18/2012 – Central Excise (N.T.) dated 17.03.2012*. The new scheme does not require the kind of correlation that was needed earlier between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services would be entitled to be refunded in the ratio of the export turnover to total turnover;

The substituted Rule 5 provides that a manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified in relevant notification as follows:

$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net CENVAT Credit}}{\text{Total turnover}}$$

The refund claim on service tax should be made as per the procedure notified under the section 11B of Central Excise Act, 1944, wherein it has been provided that, a claim for refund would generally have to be filed before the ACCE/ DCCE within one year from the relevant date.

SEZ Refund

The service provided to SEZ unit or developer is treated as a service provided to a place outside India as per SEZ Act. Notification No. 12/2013-ST dated 01.07.2013 provides that the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio, wherein under the previous Notification No.40/2012 ST dated 20.06.2012, the ab-initio exemption was admissible only to the specified services which were “wholly

consumed" within the SEZ. However, the exemption would be allowed if the specified services are 'used exclusively' for the authorised operations, whether or not they are wholly consumed within the SEZ.

The notification also provides for a refund mechanism, in cases where specified services are used for authorised operations as well as for other operations. It also mentions that in case the specified services are common to the authorised operations in an SEZ and domestic tariff area [DTA], then service tax paid shall be distributed amongst the SEZ Unit and the DTA Unit in the manner prescribed in Rule 7 of CCR, 2004 i.e, on pro rata basis.

It further mentions that in case SEZ unit / developer is not a registered assessee under Central Excise / Service Tax, then unit should get itself registered, before filing of refund claim. The claim for refund is to be filed within one year from the end of month in which actual service tax payment is made by SEZ Unit / Developer. Only one refund claim can be filed in each quarter.

Forms A-1 to A-4 have been prescribed to claim the exemption benefit under this Notification.

Classification of Services

In the earlier provisions, classification of services had to be done properly, it was necessary that services were classified and service tax was paid under that head only. However, the rate of service tax for all the services was same. Classifications of services under positive list based taxation was were to be done as follows:

1. When services are prima facie classified under two or more heads, it is to be classified under the head which provides the most specific description.
2. When composite services are provided, such services are to be classified on the basis of service which gives them essential character.
3. When a service can't be classified under any of the two above, it is to be classified under the sub – clause which occurs first among the sub – clauses which equally merit consideration.

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.

However with the introduction of Negative list-based taxation, the need for classification of services is largely reduced, it is now used for procedural purposes like registration, payment and return purposes only. The classification of services has more relevance in the case of newly introduced bundle of services. However such classification requirement would continue to exist for understanding in the following areas where definition of services necessary –

- In the negative list of services
- In the declared list of services
- In exemption notification
- In the proposed Place of Provision of Service Rules, 2012
- In certain other rules and notifications.

Specified Services and Bundled Services

Under Negative list based taxation, Section 66F of the Act has laid down the principles for interpretation wherever services have to be treated differentially for any reason and also for determining the taxability of bundled services.

Clause (1) of section 66F provides that 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. In other words, taxability of an input service used to provide a specified service, cannot be determined, based on taxability or otherwise of such specified output service. In other words, the input services which are in the nature of services used for providing the negative list services would not be excluded from service tax levy.

Clause (2) provides that the most specific description shall prevail over a more general description.

Taxability of Bundled Services

'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. An example of 'bundled service' would be air transport services provided by airlines where catering service is also provided 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.

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

a. If the various elements of such services are naturally bundled together in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character. For instance: Serving of lunch in accommodation by way of rooms provided in a Hotel. The service of hotel accommodation gives the bundle the essential character.

b. If the various elements of such services are not naturally bundled together in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax. For instance, renting of an immoveable property under single agreement partly for residential and for business usage. In this case renting for use as residence is a negative list service while renting for business purpose is chargeable to tax. Of the two services bundled together, renting for business attracts

higher liability of service tax, therefore, the entire bundle would be treated as renting of commercial property.

Clause (2) provides that the most specific description shall prevail over a more general description.

To sum up:

- Bundled service is provision of one type of service which is provided along with another type or types of services.
- If such services are bundled in the ordinary course of business then the bundle of services would be treated as consisting entirely of such service which determines the dominant nature of such a bundle.
- If such services are not bundled in the ordinary course of business then the bundle of services would be treated as consisting entirely of that service which attracts the highest liability of service tax.

Valuation of Taxable Service

The valuation under service tax is governed by the provisions made under section 67 of the Finance Act, 1994:

- When value of taxable service shall be determined on the basis of one of the following:

  (a) Consideration in money for providing the service.

  (b) For a consideration not wholly or partly consisting of money.

  (c) Consideration in any form other than money.

The consideration in any form other than money shall be determined in a manner as prescribed in Rule 3 of Service Tax (Determination of Value) Rules, 2006 only when value is not ascertainable.

(a) The value of taxable service shall be the gross amount charged for providing similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration.

(b) When value cannot be determined by the method given above, then 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.

(c) Any expenditure or costs incurred by the service provider in course of providing taxable service shall be treated as consideration for the taxable service provided and shall be included in the value of taxable value, however the expenditure incurred as “Pure Agent” shall not be included.

(d) Specific cases in which the commission, costs, etc. shall be included or excluded are provided under Rule 6 of the Service Tax (Determination of Value) Rules, 2006.

What is meant by gross amount charged?

(a) The "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.

(b) The gross amount charged can be inclusive of service tax. In such a case the value shall be such amount as, with the addition of tax payable, is equal to the gross amount

charged. (e.g., if gross amount charged, including service tax @ 12.36% is ₹ 100. Then the value of taxable service shall be ₹ 89.00 and the service tax payable shall be ₹ 10.68 plus Education Cess ₹ 0.32).

(c) The gross amount charged for taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

Amendments in Valuation Rules

A new "*Rule 2A, Determination of value of service portion in the execution of a works contract"* has been added in Service Tax (Determination of Value) Rules, 2006 and the gist of the rule is as

- ✓ The value of the service portion of the works contract shall be equivalent to the gross amount charged for the work contract reduced by the value of property in goods transferred in the execution of works contract. If VAT has been paid on the goods so transferred, the value for the purpose of VAT will be considered for the purpose of valuation of service portion of works contract.
- ✓ If VAT has not been paid on the actual value of the property in goods transferred in the execution of the works contract, the 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;
- ✓ Profit earned by the service provider relatable to supply of labour and services; If the value is not so deducted as above, and not merely as an option, the value shall be specified percentage of the total value as follows:
  - (a) for original works, service tax shall be payable on 40% 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 70 % of the total amount charged for the works contract

(c) in case of other works contracts not covered under a & 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 60% of the total amount charged for the works contract.

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;

(b) "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.

As regards to CENVAT Credit, there is no bar on availment of credit of service tax paid on any inputs services or capital goods used for providing the service [as differentiated from inputs like steel and cement] in relation to services involved in such works contract. However as far as duty paid on goods are concerned, it is specifically restricted for 'inputs' used in or in relation to the said works contract. It would be interesting to note that benefit of CENVAT Credit of Capital Goods would to be available even if the same were used partially for providing the taxable service.

Likewise, Rule 2C has been introduced, for determination of value of taxable service involved in supply of food and drinks in a restaurant or as outdoor catering. The value is being adjusted such that the industry is able to utilize credit on capital goods, specified inputs (other than Chapter 1 to 22 of Central Excise Tariff Act, 1985 i.e. foods and beverages) and input services.

Sl. No.	Description	Taxable Percentage of the total amount
(1)	(2)	(3)
1.	*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*	*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) is supplied in any manner as a part of such outdoor catering*	*60*

Total amount' referred above means the sum total of gross amount charged and the fair market value of all goods and services supplied by the service receiver in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating), under the same contract or any other contract, less (i) the amount charged for such goods or services provided by the service receiver; and (ii) the value added tax or sales tax, if any, levied to the extent they form part of the gross amount or the total amount.

Impact of Recent Decision

As per been recent decision of Kerala High Court wherein it has held that the Centre's decision to impose service tax on food and beverages supplied by AC restaurants with licenses to serve alcoholic beverages in 2011-12 Budget was beyond the legislative competence of the Parliament. This decision was by application of the principle that the Constitution is above the law. As the Constitution permitted sale of goods during service as taxable. Necessarily service formed part of sale of goods.

Therefore, State Government alone has the competence to enact a law imposing tax on service elements forming part of sale of goods, Court ruled. Further this decision has held that service tax imposed on services by a hotel, inn, guest house, club or camp-site for providing of accommodation would be trenching on Entry 62 of List II[state list] which taxes luxuries.

The High Court also held that if the petitioners have made any payments, they are entitled to seek refund of the same.

This could be an indication how the issue of taxability of supply of food and drink may move forwards. This decision from Kerala High Court would hold good in that jurisdiction and has a persuasive value in other states.

Pure Agent Concept

With the introduction of Service Tax (Determination of Value) Rules 2006, even reimbursements of expenses during the course of providing services are being subjected to service tax. Exclusion has been provided for expenses incurred by the service provider as a pure agent of the service receiver.

Pure agent" as per explanation (1) to Rule 5(2) of Service Tax (Determination of Value) Rules 2006, means a person who –

(i) 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

(ii) 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

(iii) Does not use such goods or services so procured and

(iv) 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 –

(i) 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

(ii) Service receiver to receive and use the goods or services procured by the service provider on his behalf

(iii) Service receiver to be liable to make payment to the third party

(iv) Service receiver to authorise the service provider to make payment on his behalf

(v) 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

(vi) 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

(vii) The service provider recovers from the recipient of service only such amount as has been paid by him to the third party

(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

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. There had been a demand of service tax on the reimbursed expenses on the ground that those are essential expenses for providing the taxable services of consulting engineers. The writ petition was filed before the High Court of Delhi with following two prayers along with quashing of show cause notice:

(a) Quashing Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to the extent it includes the reimbursement of expenses in the value of taxable service for the purpose of charging service tax in entirety.

(b) Declaring the said rule to be unconstitutional and ultra vires Section 66 and 67 of Finance Act, 1994.

After examining the legal position, H'ble High Court of Delhi allowed the writ holding that: What is brought to charge under the relevant Sections is only the consideration for the taxable service. By including the expenditure and costs, Rule 5(1) goes far beyond the charging provisions and cannot be upheld.

Rule 6 of Valuation Rules, prescribes inclusions and exclusions to the taxable value. Following changes are being made here:

- Inclusion in value of taxable service of *"any amount realized as demurrage, or by any other name, for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of* service". This change has become relevant in the context of negative list where such amounts may be collected in the name of demurrage but will actually be in all respects a service.
- In sub-rule (2) clause (iv) regarding exclusion from taxable value of *'interest on loans'* is has been substituted with *"interest on delayed payment of any consideration for the provisions made (services/ goods), whether moveable or immoveable"*. This will keep such amounts outside the value and thus not be relevant for reversal of credits under Rule 6(3) of CENVAT Credit Rules, 2004.
- Under the list of exclusions from taxable value *"accidental damages due to unforeseen actions not relatable to the provision of service"* has been added. This again is in view of the negative list approach to taxation of services and to confine inclusions of demurrages to those detailed above.
- The value of any taxable service does not include the taxes levied by any Government. The taxes levied by any Government on any passenger travelling by air, is shown separately on the ticket, or the invoice for such ticket, issued to the passenger. Also subsidies and grants disbursed by the Government not directly affecting the value of service.

CENVAT Credit Rules, 2004

The CENVAT Credit Rules, 2004(CCR, 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 CENVAT credits would not be available in respect of the Central Excise (CE) duties on raw materials and service tax on input services used exclusively for manufacture of exempted goods or providing exempted services. 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.

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 (CCR, 2004), for the exact text though the definitions have been discussed below with reference to a service provider.

Concepts

The definition of *'input'* contained in Rule 2(k) of CCR, 2004, given in the table below for better understanding as inclusion and exclusions:

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, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or (Free warranty – the value of which is included in the price of the final goods and is not charged separately)	Any goods used for a) construction of building or a civil structure or a part thereof and b) for laying foundation or making structure for support of capital goods Except for provision of service portion of works contract service as listed in section 66(E) (b) of the Act.
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.
All goods used for providing any output service	Motor vehicles.

Inclusions	Exclusions
	Any goods such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment used primarily for personal use or consumption of any employee.
	Goods having no relationship whatsoever with the manufacture of final product.

As per Rule 4(1) of CCR, 2004, The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service.

Concept of Capital Goods

"Capital goods" as per Rule 2(a) of CCR, 2004, means:

"A. The following goods –

(i) 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

(ii) Pollution control equipment

(iii) Components, spares and accessories of the goods specified at clauses (1) and (2) above

(iv) Moulds and dies, jigs and fixtures

(v) Refractories and refractory materials

(vi) Tubes and pipes and fittings thereof; and

(vii) Storage tank and

(viii) Motor vehicle other than those falling under headings 8702, 8703 (passenger vehicles) 8704 (goods vehicle) , 8711 (two-wheelers) and their chassis, but including dumpers and tippers, used-

- *in the factory of the manufacturer, but does not include any equipment/ appliance used in an office; or*
- *Outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or*

- *for providing taxable services,*

B. *Motor Vehicles designed for transportation of goods including their chassis, registered in the name of the service provider, is considered as capital goods w.e.f. 1st July, 2012, if used for:*

- *Renting of such motor vehicle or*
- *Transportation of inputs and capital goods used for providing an output service or*
- *Courier agency*

C. *Motor Vehicles designed to carry passengers including their chassis, registered in the name of the service provider , is considered as capital goods w.e.f. 1st July, 2012 if used for providing an output service of*

- *Transportation of passengers,*
- *Renting of such motor vehicle,*
- *Imparting motor driving skills*

D. *Components, spares and accessories of motor vehicles which are capital goods for the assessee*

The credit for service tax paid on their hiring would be allowed only in relation to motor vehicle which is capital good. The credit for service tax paid on general insurance and repair would be allowed to a manufacturer of motor vehicle in respect of motor vehicle manufactured by such person or an insurance company in respect of motor vehicle insured or reinsured.

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 factory of manufacturer / premises of service provider (outside factory of manufacturer for generation of electricity for captive use within the factory), shall be taken for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year.

Credit in respect of capital goods may be taken by output service provider on delivery other than the premises of service provider, subject to documentary evidence regarding delivery and location. The balance credit may be taken in the subsequent financial year if the capital goods are in possession of such service provider. 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.

Exceptions-

- 100% credit allowed in first year, if the capital goods are cleared as such in the same financial year, however subsequently entire credit need to be reversed
- In case of imported goods – credit of 100% SAD allowed in the year of receipt,
- 100% credit allowed to SSI in same financial year,

The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961 (43 of 1961).

Definition of Input Service

As per Rule 2(i) of CCR, 2004, Input Service means:

- Any service used by service provider for providing an output service; or
- used by the manufacturer whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal.

Further inclusions and exclusions have been tabulated below:

Inclusions	Exclusions
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)	(i) Service portion in the execution of works contract and construction services used for construction of a building or civil structure or laying of foundation or making of structures for support of capital goods ***except*** for the provision of one or more of the specified services; or (ii) Services of renting of motor vehicle (MV) which is not a capital goods; or (iii) General insurance, servicing, repair & maintenance relating to MV which is not capital goods except when used by:- • A manufacturer of MV • Insurance company in respect of MV insured or reinsured.

Inclusions	Exclusions
• Inward transportation of inputs or capital goods, and • Outward transportation up to the place of removal	(iv) Services such as outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits when such services are used primarily for personal use or consumption of any employee.

Note: *The word "such as activities in relation business" has been deleted in the Finance Act 2011-12 budget.*

As per Rule 4(7) of CENVAT Credit Rule, 2004, the CENVAT Credit on input services can be availed on receipt of invoice, subject to the condition that the payment has been made within 3 months. However if the payment is not made within the period of three months the Cenvat Credit so taken shall be reversed. As soon the payment is made the credit so reversed will once again be available for set off. otherwise CENVAT credit availed needs to be reversed . However the same can be taken back as credit on making payment.

If, subsequent to payment having been made or invoice received, the amount is refunded or credit note is received, then the credit availed to that extent requires being reversed/ paid.

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)
- Special Excise Duty (Second 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 of Chapter V of Finance Act, 1994, as amended
- Service tax u/s 66A of Chapter V of Finance Act, 1994, as amended
- Service tax paid under reverse charge mechanism
- Counter Veiling Duty u/s 3 (3) of Customs Tariff Act on imported goods called additional duty of customs in lieu of excise duty

The service provider cannot claim credit of SAD 4%(additional duties of customs in lieu of sales tax) leviable under section 3(5) of the Customs Tariff Act, by virtue of proviso to Rule

3(1) (viia) of CENVAT credit Rules 2004.

Utilisation of CENVAT credits

The CENVAT Credit on inputs, capital goods or on input services can be utilized either for –

- Payment of excise duty on any final product or
- Payment of service tax on output service or
- Reversal of CENVAT credit availed on inputs when the inputs are removed as such or after partial processing or
- Reversal of CENVAT credit on capital goods where the capital goods have been removed as such or
- Payment of amount as required u/r 16(2) of Central Excise Rules 2002 (reversal of CENVAT or payment on transaction value in case of clearance of goods, which had been brought back to the factory for repairs, etc.)

The credit of education cess (whether on input services or excisable goods) is to be used for payment of education cess, and also the credit of SHE cess (whether on input services or excisable goods) is to be used for payment of SHE cess.

When inputs/ capital goods are removed outside the premises

As per Rule 3(5) of CCR, 2004, 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.

In case of capital goods removed after use, where the credits are to be reversed, the reversal would be reduced on SLM basis with respect to computers and computer peripherals at prescribed percentage, as referred in Notification 06/2010- CE(NT) dated 27.02.2010 and for capital goods other than computer and computer peripherals at 2.5% per quarter or the duty on transaction value, whichever is higher.

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 are written off fully or a provision for such write-off is made in

the books of accounts, 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.

Further an explanation has been added *vide Notification No. 3/2013 – CE (N.T.) dated 01.03.2013* after the proviso to sub-rule 5B, that if the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

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 CCR, 2004, to a job-worker for processing, testing, reconditioning etc. The goods after processing, testing etc are to be received back within 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.

Obligation of the service provider where he provides both taxable as well as exempted services (Rule 6 of CCR 2004)

The CENVAT credits on inputs and input services can be availed by service provider to the extent attributable to taxable services. Where the service provider is discharging service tax liability on part of the value of receipts and not on others, it can avail proportionate credits.

The assessee has to opt for either of the following options in this regard:

Option I

As per Rule 6(2) of CENVAT credit Rule, 2004, where a provider of output service avails the CENVAT credit in respect of any inputs or input services and provides such output service which are chargeable to tax as well as exempted services, then provider of output service has to maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the exempted services. He can take the CENVAT credit only on that quantity of input or input service which is intended for use in providing output service on which service tax is payable.

Option II

As per Rule 6(3) of CENVAT Credit Rules, the provider of output service opting not to maintain separate accounts shall follow either of the following options as applicable to him,

1. The service provider has to pay 6% of value of the exempted services for the year 2012 onwards.
2. The provider of output service shall pay an amount equivalent to the CENVAT Credit attributable to inputs and input services used in or in relation manufacture of exempted goods or for provision of output services subject to conditions and procedures specified in sub rule (3A).
3. Maintain separate accounts for the receipt, consumption and inventory of inputs meant for use in the exempted services and pay an amount as determined under sub-rule (3A) in respect of input services.

Note: No Credit would be available on inputs or input services used exclusively for manufacture of exempted goods or providing exempted services.

Manner of distribution of credit by input service distributor (ISD) (RULE 7 of CCR, 2004)

Input Service Distributor (ISD) - Rule 2(m) :

- Office of manufacturer or provider of output service
- Receives invoice towards Input service
- Issues invoice/bill/challan for distribution of credit of service tax paid on such service

Distribution to manufacturing units or units providing output service, subject to following conditions-

- Credit distributed shall not exceed service tax paid
- Credit attributable to service used in a unit exclusively engaged in manufacture of exempted goods or provision of exempted service shall not be distributed
- Credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit;
- Input service attributable to more than one unit – credit to be distributed amongst all relatevant units proportionately on the basis of turnover

Refund scheme in case of exporters (RULE 5 of CCR, 2004)

Refund allowable to –

- Manufacture who clears final product or intermediate product for export without payment of duty under bond or undertaking, or
- Output service provider who provides output service which is exported, without payment of service tax

No refund is allowed, if Duty Drawback is availed, or Duty Rebate is claimed

The new scheme does not require the kind of correlation that was needed earlier between exports and input services used in such exports.

The Duties or taxes paid on any goods or services that qualify as inputs or input services would be entitled to be refunded in the ratio of the export turnover to total turnover:

$$\text{Refund amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net CENVAT Credit}}{\text{Total turnover}}$$

(A) Refund amount means the maximum refund that is admissible;

(B) Net CENVAT credit means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of Rule 3 (i.e., REMISSION OF DUTY), during the relevant period;

(C) Export turnover of goods means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;

(D) Export turnover of services means the value of the export service 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;

Others relevant provisions under CENVAT Credit Rules, 2004

- Rule 9(1)(e), is being amended to allow availment of credit on the tax payment challan in case of payment of service tax by all service receivers on reverse charge;

- Rule 14, provides provision in respect of recovery of CENVAT Credit wrongly taken or erroneously refunded. has been amended, by Finance Act, 2012 to provides that CENVAT credits would be recoverable along with the interest only if the CENVAT credits are wrongly taken and utilized. In other words, the interest would not be payable merely when the credits are availed wrongly, without being utilized. The same would be able to reversed.

Handling of Service Tax Audit by Department

The following points are to be kept in mind while handling Service Tax Audit by Department:

A. The following areas could be checked and documented:

1. All records prepared and maintained for recording and accounting transactions, such as for the receipt of inputs, input services, capital goods as well as output services provided could be verified. In addition, the underlying documentation by way of suppliers of inputs and capital goods and input services invoices, could be documented.

2. The records which are maintained for statutory compliances and internal control could be sufficient in this regards.

3. In case of service providers, the copies of agreements with customers, as well as with foreign parties could be verified to ensure correct classification, and exact liability from providing services.

4. The agreements as well as foreign exchange payments made to non-residents and foreign establishments from India by the entity in order to determine if there is a possibility of service tax liability for the service recipient in India.

5. One main issue that could arise is that of establishing nexus of input services to the taxable services provided by the assessee. If such connection cannot be established, the CENVAT credits eligibility could be at stake. It may need to be reversed along with applicable interest.

6. The presence or absence of the exempted services along with taxable services could also be an issue. since the CENVAT credits are not allowed on the exempted activities under Rule 6 of CENVAT Credit Rules, 2004.

7. The audited financial statements, directors' reports, cost audit report, income tax audit reports, and the notes to accounts to get an idea as to the financial position and background of enterprise.

B. Certain other points to bear in mind:

1. Assessee cannot refuse to produce books and records, as this could lead to penal action going beyond limitation period citing suppression.

2. The advance intimation of the same should be given by the department. The written confirmation of timeline of audit as well to be given.

3. The responsible team to be in office to answer to queries of audit team.

4. The access to books and records only during office hours. No books allowed to be removed from premises. If they seek to take records, it should be done under a written request.
5. Documents need to be furnished only for audit period.
6. The delivery of books and records to them should be acknowledged by departmental officers.
7. When auditor fails to understand the answer to query given, he may be asked to give his views in writing.
8. No assessment can be made during audit and no summons can be issued at all during audit.
9. The assessee can make his views known, before the audit objections are raised.
10. The audit team can only make factual observations and not conclusion on points of law.
11. Trade formulas and secrets to be given only on written request from auditors.

Conclusion

When number of records are continuously asked by audit team, it is better to get an internal review of records done so that the assessee knows where he/ she stands as far as compliances are concerned.

Practical Methods to Deal with Departmental Officers

Analysis, Reply to Show Cause Notice (SCN) and Preparation of Evidences

Analysis of Show Cause Notice (SCN)

What are the requirements of a SCN?

1. *Issue of Show Cause Notice (SCN):* The SCN can be issued to the service provider. The only exception would be where the service tax liability is to be borne by the service recipient under reverse charge mechanism.

2. *Essential Details are to be given:* The SCN should be containing all the relevant details. The amount demanded, amount of service tax demanded etc., should be disclosed. This is because the service tax finally determined cannot exceed the amount set out in SCN. The penalty proposed should also be mentioned. The SCN should mention the contraventions.

3. *The objections raised against the assessee should be stated.*

4. *Copies of documents:* The department is obliged to give a copies of all relevant documents relied upon. Such documents could be important for the defence of the assessee. Demands cannot be sustained based on material not referred to in SCN.

5. Where the relevant section or sub-section is wrongly referred to, it would not invalidate the SCN, if the substance of the notice is clear. Non-mentioning or wrong mentioning of a provision cannot invalidate the order passed based on SCN.

6. *SCN is always issued in writing.* There is nothing like oral SCN in service tax.

What are the contents of a SCN?

A show cause notice should be drafted in the following manner

1. Heading of Show Cause Notice should contain the address of the Commissionerate issuing the show cause notice.

2. Show Cause Notice reference number, should be provided along with the address of the assessee.

3. Brief facts of the case should be mentioned

4. Reasons as to why the show cause notice was issued should be mentioned.

5. The total amount of demand raised, interest and penalty demanded under the specified section should be mentioned in the show cause notice.

What is the Methodology of a Reply?

1. The show cause notice reply should have grounds of submissions made by the assessee.

2. The assessee should give the reasons, based on facts as well as legal arguments, to prove the show cause notice was wrongly issued. Assessee should refer to all the case laws rellied upon along with citations while preparing the submission.

3. In case the assessee wishes to substantiate his reasoning along with other documentation or annexure, the same should form part of the annexure to reply to the show cause notice. The evidences could be the following:

    - Department correspondences/ replies
    - Contracts/ orders tenders
    - Mails/ sales correspondences
    - Invoices purchases/ sales/ services
    - Accounts- *present and past*
    - VAT/ Central Excise/ Income Tax Returns
    - Many others

4. A personal hearing should be asked for in the written submission made by the assessee.

5. The show cause notice reply should also accompany an authorisation letter duly signed by the assessee, who authorises the representative to appear before the Assistant Commissioner or Commissioner on behalf of the Assessee.

Handling of Adjudication

How to handle a Show Cause Notice (SCN)?

Following points are important to note while handling any show cause notice:

(i) There is a possibility that the date of notice and date of receipt of notice could be different. For instance, the SCN may be dated 30.5.2012 and received only on 15.6.2012. While acknowledging the SCN, always remember to put date and time over the acknowledgement copy. [Retain the proof of receipt].

(ii) Don't avoid the receipt of SCN. If a SCN is being served, there is no point in avoiding receiving it. It has to be received and then contested/ replied.

(iii) If the service of notice is time barred, it could be suitably replied with substantiating evidence.

(iv) If the SCN is making a demand beyond one year (amended to 18 months w.e.f. 28th May, 2012), it would have to be proved in the SCN that there was suppression etc. on assessee's part so that department can invoke the provision of five years. SCN has to prove suppression. [In the new regime the onus of compliance has substantially shifted to the tax payer].

(v) In case assessees are expecting that there could be any SCN, due to service tax payables, it would be advisable to pay service tax before SCN is issued. SCN cannot be issued for the amounts are already paid.

(vi) Whenever SCN is intended to enhance the liability of assessee or reduce the amount of refund, an opportunity of being heard is necessary and it can not be denied by the revenue department.

(vii) One can challenge the validity and legality of SCN served on oneself on the basis of facts, time or even jurisdiction.

(viii) SCN is to be issued for a particular period. If a demand is raised, admitted and paid, SCN would still be required to be served for subsequent period. If same issue for which notice was already issued, then for subsequent periods can serve a statement containing details of service tax payable. The service of statement shall be deemed to be service of notice.

(ix) Department cannot go beyond the issues mentioned in SCN and adjudicate an issue which is not a subject matter of SCN.

(x) While efforts must be made to reply within the stipulated period, it would be advisable to seek extension of time if required and necessary or adjournment sought which is normally granted.

(xi) Try to pro*vide* reply or explanation to all points covered in SCN and wherever necessary, substantiate the reply with documentary evidences.

(xii) Comprehensive & detailed reply may be submitted along with earlier decided case laws.

(xiii) A list of evidences on which you are relying must also be submitted.

(xiv) Even where you have submitted a detailed and convincing reply to SCN, you should seek the opportunity of personal hearing and crave to alter or amend or modify your reply to show cause at any stage during adjudication proceedings.

(xv) Where penalty is levied or demand is confirmed or refund is revoked, you can always seek remedial measures for relief under section 80, pleading that there was a reasonable cause which prevented you from compliance of provisions.

(xvi) Orders issued against show cause notice are appealable.

It is felt that the above points if borne in mind by the assessees and service providers shall help them in appropriately replying to the show cause notice issued by the Department.

What is the procedure for reply to Show Cause notice issued under Section 73 of the Finance Act, 1994 and Rule 14 of CENVAT Credit Rules, 2004

The service provider or the officer may on account of non-levy of tax or short levy or short payment or erroneous refund, or where the CENVAT credit has been taken erroneously, the Central Excise Officer/Proper Officer may issue a show cause notice. The procedure for replying to such show cause notice is detailed here under:

(i) The proper officer may issue Show Cause Notice. Once it is received, make a note of the date of receipt and the proof of the same should also be retained. The postal cover under which the same was received can be filed.

(ii) The contents of the SCN may be pursued and if the objection is genuine and SCN is received within 18 months (w.e.f. 28th May, 2012), the amount may be debited and the adjudicating officer intimated with the compliance. In the event the SCN seeks to levy penalty, a request for condonation may be made mentioning therein, the *bona fide* nature of the error.

(iii) In some cases, it could be possible that the circumstances mentioned in point No. 2 do not exist. In such a case the assessee may choose to communicate in writing to the department providing them with the factual situation and the legal issues, which require to be taken into account. In the event the SCN is not clear, the assessee is well within his rights to ask the issuing officer for clarification as to the grounds of the allegation and under which provisions of the law the demand/ reversal is sought to be made.

(iv) The assessee may, if the contents are clear and there appears to be confusion in understanding pro*vide* the reasons why said demand is not taxable. He should at such times include all material facts and legal interpretations on which he feels that the demand is not justified. The examination of the competence of the officer issuing the SCN may also be examined. At this juncture he would have to decide whether the assistance of a counsel is required or not.

(v) A legal opinion may be obtained on the liability, if substantial.

(vi) He/ She or the counsel should in their reply pro*vide* any clarifications issued by the department in regard to the matter, any decisions of the Tribunal, High Court or Supreme Court which may support his contention in addition to the facts of the present SCN. The reply should explicitly ask for hearing, if matter can be better explained along with physical demonstration.

(vii) This reply should normally be filed within 1 month of the issue of the SCN or extended time, if applied for. The reply should be filed and an acknowledgement obtained in person or by RPAD (Registered Post Acknowledgement Due)

(viii) In some of the cases there maybe a necessity to cross examine the officer who has recorded the statement or the officer who has conducted the audit or officers who have visited the assessee to confirm some facts. This is required when facts have been twisted in the notice. This practice of cross examination in genuine cases would also be a great leveler in the excesses practised by some over zealous officers.

(ix) In the event of any material facts being known prior to the adjudication or any case laws which is relevant for the same, it may again be communicated as stated above.

Handling of Appeals

As per section 85 of the Finance Act, 1994, as amended, if the order is passed by authority subordinate to Commissioner, appeal can be filed with the Commissioner (Appeals) within 3 months from the date of receipt of order of adjudicating authority. Commissioner (Appeals) can condone delay up to 3 months. The above-mentioned time limit has been reduced to two months and one month respectively in case of order passed on or after 28th May, 2012.

Handling of Service Tax Appeals before Commissioner (Appeals)

Procedure for filing appeal to the Commissioner (*Appeals*)

A. An appeal lies to the Commissioner (Appeals) against an order or decision of any Central Excise Officer lower in rank than a Commissioner. Appeals against the orders passed by the Superintendent or the Assistant Commissioner or Deputy/ Joint Commissioner and Additional Commissioner would lie with the Commissioner (Appeals).

B. Only the parties aggrieved by the order can file an appeal.

C. The appeal must be filed in Form ST-4 in duplicate. The appeal must be paragraph wise with statement of facts and the grounds of appeal. The case law relied upon should be stated in the grounds of appeal.

D. This appeal is also to be accompanied by a stay application which may be heard earlier or along with the appeal.

E. Form ST-4 should be signed and verified in accordance with Rule 4 of Central Excise Appeals Rules, 2001. The appeal should be signed by the following Persons:

   (a) *in the case of an Individual,* by the individual himself or where the individual is absent from India, by the individual concerned or by any person duly authorised by him in this behalf; and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf.

   (b) *in the case of a Hindu Undivided Family*, by the Karta and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

   (c) *in the case of a Company or Local Authority,* by the principal officer thereof;

   (d) *in the case of a Firm,* by any partner thereof, not being a minor;

(e) *in the case of any Other Association*, by any member of the association or the principal officer thereof; and

(f) *in the case of any other Person,* by that person or any person competent to act on his behalf.

F. Form ST-4 which is filed in duplicate should be accompanied by a certified copy of the decision or order appealed against. It is not necessary to enclose the original order along with form ST-4. It is the practice of certain Commissionerates to insist on the copy of the order certified by the department or notarized. In such cases, the order can be certified by the range authorities. This practice, however, is not warranted by the Rules.

G. The appeal papers maybe typed in foolscap paper (green bond paper) in double line spacing on one side of the paper only.

H. The appeal should be filed within two months (earlier three months) from the date of communication of the decision or order of the lower authority. The Commissioner (Appeals) has the power of condoning delay for a further period of one month. Beyond this period, no relief can be granted by the Commissioner (Appeals) or even Tribunal. The revised time limit would be applicable in respect of decision or order passed after 28th May, 2012

I. If the appeal is sent by registered post, it should be ensured that the appeal would be received by the office of the Commissioner (Appeals) well within the two months period from the date of receipt of the order.

J. The appeal should also be signed by the authorized representative. If the assessee is being represented by an Advocate, a Vakalat Nama must be filed accompanied with applicable court fee stamp. If the assessee is represented by an authorised representative, then also an authorization should be executed in his favour on a non-judicial stamp paper on the value as applicable. Assessee may ascertain the stamp value to be used in their respective states.

K. There is no fee for filing the appeal. However court fee stamp has to be affixed on the appeal. One appeal is sufficient, if there is one original order by the adjudicating authority.

L. The appeal must be accompanied by a petition under section 35F to dispense with pre-deposit of duty or penalty. It should be noted that in the absence of such petition, the assessee has to deposit the duty or penalty with the adjudicating authority before the appeal is disposed of. Drafting of stay petitions must be done with utmost care. Kindly see procedure for drafting stay applications for this purpose.

M. The Commissioner (Appeals) has no powers to remand the matter and has to decide the case himself/ herself.

Other Points Related to Appeals

1. Final appeal of the above order lies with CESTAT under Section 86 of the Act within three months.

2. As per Section 86 of the Act, if adjudication order is passed by commissioner, appeal is to be filed to CESTAT within 3 months from the date of receipt of order. Section 86 has been amended whereby the time limit for filing appeal with Appellate Tribunal by Revenue has been is increased to 4 months from 3 months.

3. The Department can also appeal to the tribunal against the order passed by Commissioner (Appeals) or Commissioner within the prescribed period of four months.

   In case of Appeal to tribunal, the other party being the respondent has to file memorandum of cross objections within 45 days of receiving such notice.

4. As far as Appeals to High Court and Supreme Court are concerned provisions 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.

5. The appeal against the order of the High Court may be filled 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.

6. The periods for filing appeals in service tax are being aligned with Central Excise. These are captured by relevant amendments in sections 85 and 86 of the Act.

7. Central Excise provisions relating to revision mechanism (section 35EE of Central Excise Act, 1944) are being made applicable to service tax by amending section 83 of the Act.

Place of Provision of Service Rules (Import/ Export of Services Rules)

Position prior to 1st July, 2012

A. *A **Import of service** is taxable under Section 66A of the Finance Act, 1944* : A taxable service is considered to be imported, if:

- The provider of taxable service is from outside India and
- The receiver of service has his permanent address/ usual place of business in India.
- The service provided is construed as import under Import Rules. (Services are divided in to three categories namely *services provided in relation to immovable property, services partly performed in India and outside India and based on recipient location*)

This is applicable even though the service is received/ consumed by the Indian outside India. This provision is not applicable in case of individuals who have received such service other than for the purpose of use in business or commerce.

B. ***Export of services*** following conditions are to be specified:

- Such service is delivered outside India and used outside India, and
- The payment received for providing such service should be in convertible foreign exchange.

It falls under three categories as Export of service rules (Services are divided in to three categories namely *services provided in relation to immovable property, services partly performed in India, and outside India and based on recipient location*)

Position after 1st July, 2012

In terms of section 66C of the Finance Act, 1944, as amended, the ***'Place of Provision of Service Rules, 2012'*** (the PoPSR) have been issued vide Notification No. 28/2012-ST dated 20.06.2012, and with this, the earlier Export of Service Rules, 2005 and the Taxation of Services (Provided From Outside India and Received in India) Rules, 2006, have been repealed. The PoPSR specifies the manner of determination of the place where a service shall be deemed to be provided in terms of sub-section (1) of Section 66C read with clause (hhh) of sub-section (2) of Section 94 (hhh) of the Finance Act, 1994, as amended.

As per Section 66B of the Finance Act, 1944, as amended provides *inter alia* that a service is taxable only when it is provided or agreed to be provided in the taxable territory and thereby brings into play the place of provision of service. The PoPSR is based on the fundamental concept that as indirect tax, service tax is a consumption based tax which is taxable in the jurisdiction of its place of consumption. *Taxable territory* is defined to include India excluding Jammu & Kashmir (J&K), whereas non-taxable territory is defined as the territory other than taxable territory.

Additionally, service providers operating within India from multiple locations, without having centralized registration would find them useful in determining the precise taxable jurisdiction applicable to their operations. To determine whether the place of provision of service is in the taxable territory, we need to ask the following questions sequentially, applying these rules:-

1. Which rule applies to my service specifically? In case more than one rules apply equally, which of these come later in the order given in the rules?
2. What is the place of provision in terms of the above rule?
3. Is the place of provision in taxable territory? If yes, tax would be payable. If not, tax would not be payable.
4. Are we 'located' in the taxable territory? If yes, we would pay the tax.

Analysis of the Rules

Under the new enactment, the incidence of taxation is very much dependent on the determination of the location of the service provider and service receiver. In that, one has to enquire sequentially:

A. the premises for which registration, whether centralized or otherwise, has been obtained by the service provider and receiver;

B. where the service provider or receiver is not covered by 'A' above :

   (i) the location of his business establishment; or

   (ii) where services are provided or received at a place other than the business establishment i.e., a fixed establishment elsewhere, the location of such establishment;

   (iii) where services are provided or received at more than one establishment, whether business or fixed, the establishment most directly concerned with the provision or use of the service; and

   (iv) in the absence of such places, the usual place of residence of the service provider or receiver.

It is important to note that in the case of a service receiver, the place relevant for determining the location is the place where the service is *'used'* or *'consumed'*. For proper understanding of the terms *'business establishment'*, *'fixed establishment'*, *'establishment most directly concerned with the supply',* one has to refer to the departmental 'guidance note' where such terms have been explained at length.

For the purpose of the PoPSR, Rule 2, thereof defines some important terms like *'continuous journey'*, *'intermediary'*, *'leg of journey'*, *'location of the service provider'*, *'location of the service receiver'*, *'means of transport'*, *'banking company'*, *'non-banking financial company'*, *'online information and database access or retrieval services'*, *'telecommunication service'* etc. Of all the definitions, the definitions of *'location of the service provider'* and *'location of the service receiver'* are most important and bring in the concept of *'usual place of residence in case of a body corporate', 'business establishment', 'fixed establishment'* and *'establishment most directly concerned with the provision of service'*.

According to Rule 3 of the PoPSR, the general rule is that the place of provision of a service shall be the location of the recipient of service, in the absence of which and subject to rules 4 to 12 of the PoPSR, the place of provision of service shall be the location of the service provider.

Summing up, it is the provider of service who is normally liable to pay the tax except where he is stationed outside the taxable territory and the place of provision is in the taxable territory. However, if the provider of service is stationed outside the taxable territory, it is the receiver of service in the taxable territory who will be liable.

The Place of Provision of Services Rules are summarized as under:

Sl. no.	Relevant Rule	Situations	Place of provisions of Service
1	3	On General basis	Location of service receiver However, if the location of the service receiver is not available in the ordinary course of business, the location of the service provider shall be the place of provision.
2	4	Performance based services:	
a)		Services provided in respect of goods that are required to be made physically available by the service receiver to the service provider	Location at which services are actually performed by service provider

Sl. no.	Relevant Rule	Situations	Place of provisions of Service
		Proviso – when services are provided from a remote location by way of electronic means	Location at which the goods are situated at the time of provision of service.
b)		Services provided, in the physical presence of an individual, represented either as the service receiver or a person acting on behalf of the receiver	Location at which services are actually performed by service provider.
3	5	Immovable property based services	Location of the immovable property located or intended to be located.
4	6	Event-based services	Location where the event is actually held.
5	7	Multiple location based services	Location of taxable territory where the greatest proportion of service is provided.
6	8	Where service provider and receiver are located in the taxable territory	Location of the service receiver
7	9	For specified services • Services provided by a Banking Company, Financial Institution, Non-Banking Financial Company • Online information and database access or retrieval services • Intermediary services • Services consisting of hiring of means of transport, upto a period of one month	Location of the service provider
8	10	Goods Transport Services	Place of destination of goods. However, for goods transport agency, the place of provision of service shall be the location of the person liable to pay tax.
9	11	Passenger Transport Services	Place where the passenger embarks on the conveyance for

Sl. no.	Relevant Rule	Situations	Place of provisions of Service
			a continues journey
10	12	Services provided on board a conveyance	First scheduled point of departure of that conveyance for the journey
11	13	The Central Government could 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. (Rule 13).	
12	14	Where the provision of a service is, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration. (Rule 14). In other words, later the better principle applicable.	

Provisions and Rules not Covered Above

Penalty u/s 77

A. Penalty, which may extend to ₹ 10,000 for:

- Failure to take registration in accordance with the provisions of Section 69 or rules made under
- Failure to keep, maintain or retain records books of account and other documents as required
- Failure to pay tax electronically by the person required to pay tax electronically
- Failure to issue correct invoice with complete details or account for the invoice in his books of accounts

B. For contravention of any other provisions of the Act where no separate penalty is provided in this Chapter shall be liable to a penalty which may extend to ₹ 10000.

C. Penalty up to ₹ 10,000 or ₹ 200 per day during which failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance :

- Failure to furnish information called for by an officer;
- Failure to produce documents called for by a Central Excise Officer;
- Failure to appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry;

Penalty u/s 78

A. Service tax not been levied or paid or been short-levied or short-paid or erroneously refunded by reason of:

(a) Fraud

(b) Collusion

(c) Willful mis-statement

(d) Suppression of facts

(e) Contravention of any of the provisions of chapter V of Finance Act, 1994 or of the rules made there under with intent to evade payment of service tax

B. Penalty equal to the amount of Service tax not levied or paid or short-levied or short paid or erroneously refunded.

C. If true and complete details of transactions were recorded in specified records, penalty shall be reduced to 50% (this was inserted w.e.f 8.4.2011).

D. Further, if the service tax, interest and penalty are paid within 30 days of communication of order of Central Excise Officer, penalty would be further reduced to 25%.

E. In case of an assessee whose value of taxable service does not exceed ₹ 60 Lakh in the preceding financial year, or during any of years covered by notice,service tax, interest and penalty can be paid within 90 days period, instead of 30 days which is allowed to other assesses.

F. If any amount was paid earlier to the communication of the order of the Central Excise Officer or Appellate Authority, the amount which was so paid would be adjusted against the total amount which is due from such a person.

G. If the service tax which is payable is increased or decreased in appeal by the CESTAT or Court, then the penalty shall also be reduced or increased accordingly.

H. Where service tax to be paid is increased by Commissioner (A), Appellate Tribunal or by Court, the benefit of reduced penalty shall be available, if the amount of service tax so increased as well as the interest and 25% of increased penalty is paid within 30/90 days of the communication of the order by which such increase in service tax takes effect.

If the penalty under this section is payable then the section 76 is not applicable.

Penalty u/s 78A, Penalty for offences by directors, etc of the company (Inserted *vide* Finance Act Bill 2013)

Where a company has committed any of the following contravention than any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may be extend to ₹ 1,00,000/-:

(a) evasion of service tax; or

(b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or

(c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due,

Penal Provisions & Prosecution

A. Where the service tax and interest is paid within 30 days, from the date of communication of the order, the penalty is 25%. The reduced penalty is available only if the penalty is paid within 30 days of the date of communication of the order. Benefit of reduction in penalty shall not be available in cases of fraud & collusion

B. If the assessee proves that there was reasonable cause for failure in payment of service tax, no penalty shall be imposed on him.

C. Penalty under Section 76 & 78 cannot be imposed simultaneously i.e., if penalty is imposed u/s 76, no penalty is to be paid u/s 78 and *vice-a-versa*.

D. Penalty levied for suppressing value of taxable services can now be waived only in cases where transactions are captured in specified records. Earlier, penalty was waived if it was proved that there was reasonable cause for said failure.

E. The provisions relating to prosecution are re-introduced for offences pertaining to knowingly evades payment of service tax , , wrong availment of input credit, failure to supply information as required by law, failure to deposit service tax beyond period of six months from the due date.

F. The imprisonment ranges from 6 months to 3 years. However sanction would have to be granted at the level of chief commissioner.

G. If the assessee collects any service tax but fails to pay the same within a period of six months then the imprisonment may extend to seven years where the amount exceeds fifty lakh rupees.

H. Recently high courts have upheld the constitutional validity of renting service & against this backdrop it is proposed that penalty may be waived for those tax payers who pay the service tax due on the renting of immovable property service (as on March 06, 2012), in full along with interest within 6 months.

Sec 90. - Cognizance of Offences: (inserted *vide* Finance Bill, 2013)

1. If the assessee collects any amount as service tax but fails to pay the same within a

period of six months where amount exceeds fifty lakh rupees, then the offence shall be cognizable.

2. All offences other than this shall be non-cognizable and bailable.

Sec 91. – Power to arrest : (inserted *vide* Finance Bill, 2013)

1. If the Commissioner of Central Excise has reason to believe that any person has committed the following offence he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person :

   (a) evade payment of tax.

   (b) wrong availment and utilization of Cenvat credit.

   (c) maintains false books of accounts

   (d) Collects but fails to pay service tax.

2. Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.

3. In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973.

4. All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.

Assessment

A. Service tax assessment like income tax is basically self – assessment. Every person liable to pay tax shall himself assess the tax due on services provided by him. The ST – 3 return filed by the assessee contains an self-assessment memorandum

B. 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.

C. It can be issued within one year (now increased to 18 months w.e.f. 28th May, 2012) from the relevant date however in case if 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 with the intent to evade payment of service tax the time limit would be five years. The period for issuing demand notice in normal circumstances is being proposed to be increased to 18 months.

D. After considering the representation from the concerned person, Central Excise Officer can determine the amount of tax payable and then person chargeable to service tax shall pay the amount.

E. Central Excise Officers have been empowered to adjudicate in following

- Demand of service tax and its recovery – Section 73
- Rectification of mistake by amending own order – Section 74
- Imposition of penalty – Section 83 A
- Refund of service tax and interest – Section 11B

F. If an assessee voluntarily pays the duty on his own, officer shall not issue any show cause notice of the said amount. However, if he is of the opinion that there is short payment is respect of the amount, he can issue notice for the payment of balance amount. The time limit for the issue of Show Cause Notice would be counted from the date of receipt of information.

G. Provisions relating to Settlement Commission are being brought in the Service Tax. This should encourage quick settlement of disputes and save the business from the worries of prosecution in certain situations.

H. Further, a new section 99 has been inserted *vide* Finance Bill, 2013 vide which no service tax shall be levied or collected in respect of taxable services provided by the Indian Railways during the period prior to the 1st July, 2012. There shall be no refund of service tax paid for taxable services provided by Indian railway during period prior to 1st October 2012.

Demands under Service Tax

The Demand is governed by Section 73, the provisions of which can be summarized in the following table:

Initiation of proceedings under Section 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.
Follow Up Demand	A new sub-section (1A) to section 73 is being inserted by Finance Act, 2012 to save the botheration of retyping the same charges (and save paper) when a follow-up demand is given for a period subsequent to the previous notice(s) on same grounds. It is provided that the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, 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 person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.
Notice not sustainable under Sec 73(2A)	A new sub-section (2A) to section 73 is being inserted by Finance Bill, 2013. In a case where any appellate authority or tribunal or court concludes that the notice issued is not sustainable for the reason that the charge of fraud, collusion, willful misstatement, suppression or contravention of any provision has not been established the Central Excise Officer shall determine the service tax payable by such person for the period of eighteen months, as if the notice was issued for the offences for which limitation of eighteen months applies

What is the time limit for communication of show cause notice	(a) In cases involving fraud, collusion, willful misstatement or suppression of facts or contravention of any provisions with intent to evade payment of duty – notice should be served within 5 years from relevant date. (b) In other cases – notice should be serviced within 1 year from the relevant date. This is extended to 18 months w.e.f. 28th May,2012. (c) Where the service of notice is stayed by court order, the period of such stay would be excluded in computing this time limit.
From which date the time limit would be computed	The date from which the time limit would be computed is defined as 'Relevant date'. It means - (a) In case of short levy/ non-levy or short payment/ non-payment, the date on which the six monthly return is filed. If it is not filed, the date on which it was required to be filed. (*b*) If there is no such time limit, 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 the service tax amount, interest as applicable under Section 75 and penalty of 25% of the service tax is paid within 30 days of receipt of the notice then the entire proceedings shall be concluded. This provision has been done away with effect from 08.04.2011.Now in the course of audit, investigation or verification of the records, if some short payment is found then the assessee has the option to pay 1% penalty subject to 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 along with the interest and informs the department about such payment in writing, no notice would be served under this provision. In Finance Act, 2010, explanation

	is added to clarify that no penalties are also imposable. Notice for penalty also cannot be served.
Recording of assessee's representation	Sub-section 2 to Section 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 right to challenge the order by going for further appeal, where he may get a stay of demanded amounts.

The present statutory provisions relating to demand, interest and penalties under service tax can be summarized as under:

Section	Equivalent Cent. Exc.	Statutory provisions
Section 73	Section 11A (under excise time limit for issuance of notice is one year)	Recovery of taxes 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 Section 73	Proviso to Section 11A	Above mentioned 18 months would be extended to 5 yrs, if there involves fraud, collusion, willful misstatement or suppression of fact with intent to evade the payment of tax are involved.
Section 73(1A)	Section 11A(1A)	Dropping of proceedings in case of payment of tax in full or in part as may be accepted by him, and the interest payable thereon under section 11AB/ section 75 and penalty equal to twenty-five per cent of the service tax specified in the notice or the service tax so accepted by such person within thirty days of the receipt of the notice.

Section	Equivalent Cent. Exc.	Statutory provisions
		This section has been omitted by the Finance Act, 2011.
Section 73(2)	Section 11A(2)	Determination of demand after issue of notice. The provisos to this sub-section have been omitted. The provisos had set out that where the service tax was paid in full together with interest and 25% penalty within 30 days, under section 73 (1A) the proceedings were deemed to be completed, and where part payment was made, the officer would determine the amount of service tax or interest in excess of such amount that was partly due.
Section 73(4A)	Section 11A(6)	This is inserted by the Finance Act, 2011, setting out that where in course of audit or investigation or verification, it is found there is short levy/non-levy/short paid/not paid service tax or erroneous refund but transactions are in 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 the Central Excise (CE)Officer has been informed in writing of the same. Notice would not be served u/s73(1) and such proceedings in respect of such amount shall be concluded. Any additional amounts could be collected as determined is payable by the CE officer.
Section 73(3)	Section 11A(2B)	No notice to be served when the service tax is paid before issue of SCN in cases not involving fraud, collusion etc. This is not applicable for service tax become payable before 14.05.2003.
Section 75	Section 11AB	Every person who fails to credit the tax or any part to the Government shall pay simple interest.
Section 78	Section 11AC	Penalty in case of fraud, suppression, willful misstatement etc.
Section	Rule 26 of Central	Penalty for offences by director, officers of the company where company has committed any contraventions ,

Section	Equivalent Cent. Exc.	Statutory provisions
78A	Excise Rules, 2002	namely :- (a) evasion of service tax. (b) wrong availment and utilization of Cenvat credit. (c) issuance of invoice without providing service (d) Collects but fails to pay service tax.
Section 73A	Section 11D	Service tax collected from the service receiver to be deposited with the Central Government
Rule 14CCR 2004	Same Rule applies	CENVAT Credit taken wrongly or utilised wrongly or erroneously refunded then the provisions of Section 73 & 75 would apply.

Recent Critical Issues in Service Tax in Respect of Construction Activities and Works Contract

Like majority of the other sectors of economy, Real Estate Sector has certain critical issues which are required to be analysed in greater detail from Service Tax point of view. In this chapter, Critical Service Tax Issues in respect of Construction Activities and Works Contract have been dealt with. The foregoing critical issues have been listed below for the sake of instant reference:

1. Issue of Repair and Maintenance of Roads
2. Issue of activity of Vehicle Parking Facility/Service
3. Issue of Preferential Location Charges
4. Issue of Surrender/Cancellation/Transfer/Buy-Back/Re-selling of a flat before its completion
5. Issue of Assured Return
6. Issue of Administrative Charges/Transfer Charges/Restoration Charges
7. Issue of Valuation of Completion and Finishing Services in the context of New Construction of an Immovable Property
8. Issue of service tax liability on Build-Operate-Transfer (BOT) Projects
9. Issue of allotment of flats/houses/shops/commercial units to the land owner towards the land/ Development Rights
10. Issue of Service Tax leviability in respect of Redevelopment of Existing Building
11. Issue of conversion of existing building for different use
12. Issue of [Developed] Plots
13. Issue of on-going contracts in respect of Construction of Residential Complex on 01.07.2012
14. Issue of Free/Concessional Supply of Materials by the Contractee
15. Availability of CENVAT Credit to Land Owners in respect of the Service Tax paid to Builders/Developers on services provided by them under Collaboration Agreements.

16. Point of Taxation in respect of services provided by Builders/Developers to land owners under collaboration agreements

All the above issued have been thoroughly discussed in a sequential order, in the following paragraphs. It is also worth highlighting that important judicial pronouncements as well as Frequently Asked Questions (FAQs) have also been given at the end of this Chapter.

1 Issue of repair and maintenance of roads

1.1 Scope of various activities falling within the scope of repair and maintenance of roads

Repair and Maintenance of Roads, *inter alia*, include "Resurfacing of Roads", "Renovation of Roads", "Strengthening of Roads", "Relaying of Roads", and "Filling of Potholes on Roads". Since the meanings of terms "Resurfacing", "Renovation", "Strengthening", "Relaying", "Filling of Potholes" in the context of Roads has not been given either in the Finance Act, 1994 or the Central Excise Act, 1944, reliance has been placed on the leading Dictionaries for ascertaining the meanings of these terms. Accordingly, the following table has been prepared:

Relevant Term	Meaning of Relevant Term	Source
Resurfacing	Putting on a new surface [the process of putting a new surface on something, especially a street, Road etc]	Merriam Webster Dictionary
Renovation	Overhaul, Renewal, Restoration, Reconstruction, Reformation	Oxford Advanced Learners' Dictionary [Sixth Edition]
Strengthening	Intensification, Amplification, Increase, Escalation, Growth	Oxford Advanced Learners' Dictionary [Sixth Edition]
Relaying	Putting something on ground again [putting something back in its correct position on the floor or ground	English Assistance: English (UK)
Potholes	Large Holes in the surface of a Road, caused by Traffic and bad weather	Collins Co-Build Dictionary
Filling of Potholes	Blocking up/Plugging/Sealing the large holds in the surface of a Road.	Webster's Dictionary

1.2 Scope of various activities falling within the scope of construction of roads

According to Circular No. 110/4/2009 dated 23.02.2009 [It is worth highlighting that this Circular was issued much before a sea change in scope of Service Tax with effect from 01.07.2012. However, the Circular can still be relied upon as the same has not been withdrawn], the following activities in respect of Roads fall within the scope of construction activities:

I Laying of a new road; or

II Widening of a narrow road to a broader road (such as conversion of a two lane road to a four lane road); or

III Changing road surface (gravelled road to metalled road/metalled road to blacktopped or blacktopped to concrete, etc).

Thus, construction of roads, *inter alia*, includes "Laying of a new Road", "Widening of a Road" and "Changing Road Surface". Since the meanings of aforementioned terms "in the context of Roads has not been given either in the Finance Act, 1994 or the Central Excise Act, 1944, reliance has been placed on the leading Dictionaries for ascertaining the meanings of these terms. Accordingly, the following table has been prepared:

Relevant Term	Meaning of Relevant Term	Source
Laying of a new road,	Putting or setting down of a new road	The Free Dictionary by FARLEX
Widening of a road	Process of broadening or making more extensive of a road. For example, conversion of a two lane road to a four lane road.	The Free Dictionary by FARLEX
Road Surface	Road surface or pavement is the durable surface material laid down on an area intended to sustain vehicular or foot traffic, such as a road or walkway.	Wikipedia
Changing road surface	Replacing the durable surface material laid down on a road. For example, (i) Changing graveled road to metalled road, (ii) Changing metalled road to blacktopped road (iii) Changing blacktopped road to concrete road.	Webster New World Dictionary

With effect from 01.07.2012, Construction of a Road meant for general public is entitled for exemption vide Notification No. 25/2012 dated 20.06.2012.

1.3 Resurfacing of roads

Services in respect of Resurfacing of a Road which is renovation of road meant for general public have been exempted by Entry No. 13(a) of Notification No 25/2012 dated 20.06.2012 with effect from 01.07.2012.

1.4 Position of taxability during different periods

The following table exhibits the position of repair and maintenance services in respect of roads during different time periods

Period	Status of taxability
From 16.06.2005 to 26.07.2009	Retrospective Exemption given vide Section 97(1) [inserted with effect 28.05.2012] of the Finance Act, 1994 by Finance act, 2012
From 27.07.2009 to 30.06.2012	Exempted Vide Notification No. 24/2009 dated 27.07.2009. The foregoing Notification has been rescinded by Notification No. 34/2012 dated 20.06.2012 with effect from 01.07.2012.
From 01.07.2012 onwards	Exemption granted vide Clause [Entry] No. 13(a) of Notification No. 25/2012 dated 20.06.2012 in respect of a road which is for use by general public. Further, foregoing exemption is not only for Repair and Maintenance Services but in respect of Construction, Completion, Renovation or Alteration Services in respect of a Road meant for general public. It can also be inferred from the above that Repair and Maintenance Services in respect of a Road which is not for meant for general public [for instance Road in a factory, residential complex] are taxable. Departmental clarification 7.9.3 I am a contractor in a number of projects for construction roads. What is my tax liability on construction of roads under different types of projects? Construction of roads for use by general public is exempt from service tax. Construction of roads which are not for general public use e.g., construction of roads in a factory, residential complex would be taxable.

2 Issue of activity of vehicle parking facility/service

Position from 01.07.2012 to 31.03.2013

Notification No. 25/2012 dated 20.06.2012 provides exemption [vide serial no. 24] with effect from 01.07.2012 to services by way of **vehicle parking** to general public excluding leasing of space to an entity for providing such parking facility.

The meaning of term General Public is given in the following table:

Relevant Term	Meaning of Relevant Term	Source
General Public	For the purpose of this clause, **'general public'** means the body of people **at large sufficiently defined** by some common quality of public or impersonal nature	Clause 2(q) of Notification No. 25/2012-S.T. dated 20.06.2012.

2.1 Nature of services covered in clause 2(q)

Under this clause, exemption has been provided to services provided by way of **vehicle parking** to general public excluding leasing of space to an entity for providing such parking facility. With a view to providing relief to the general public, exemption has been given to services in respect of vehicle parking. Looking from different prospective, if services by way of vehicle parking are given to a particular individual or group of people, then the benefit of this exemption cannot be availed because that particular individual or group of people do not fall within the scope of the term 'general public'.

On the other hand, if services are provided **by way of leasing of space** to an entity [business] for providing such parking facility [which, in turn, uses the space for providing parking facility], then the concerned person providing such space cannot avail the benefit of this exemption as he is not providing services by way of vehicle parking. On the contrary, he is providing service by way of leasing of space for commercial purposes which is a taxable service. For instance, Delhi Metro Rail Corporation [DMRC] leases out a space outside a particular Metro Station in Delhi to RKJ Ltd for the purpose of providing Parking facility to Metro commuters at a stipulated monthly lease rental of ₹ 50,000. In this case, the foregoing amount of ₹ 50,000 charged by DMRC from RKJ Ltd will be subject to Service Tax. In view of the withdrawal of exemption to services by way of vehicle parking to general public as discussed in succeeding para, the above discussion is valid only upto 31.03.2013.

2.2 Types of vehicle parking facility provided by builder to the intending buyer of flat

Broadly, following are the two types of vehicle parking facility provided by builders:

(i) Covered vehicle parking facility

(ii) Open vehicle parking facility

2.3 Service tax implications in respect of consideration charged for vehicle parking provided

The first important point to be kept in mind is that parking facility [whether covered or open] is not sold by the builders independently. The next point is that there is no doubt both the aforesaid kinds of parking facilities are subject to service tax. However, the main question which needs to be examined is here at which rate different types of parking facilities are subject to service tax. As far as covered vehicle parking facility is concerned, it is subject to service tax @ 3.09% [25% × 12.36%] of the gross amount charged because space used for constructing the relevant parking space is considered as a part and parcel of the relevant building. Similarly, open vehicle parking facility is also subject to service tax @ 3.09% [25% × 12.36%] of the gross amount charged because in the opinion of the author, open vehicle parking is also a part of the relevant residential complex, building or civil structure.

Position With Effect From 01.04.2013

Withdrawal of exemption available to Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility

The Government *vide Notification No. 3/2013 dated 1st March 2013* (applicable with effect from 1st April 2013) has omitted Entry 24 of Notification No. 25/2012 dated 20.6.2012. Entry no. 24 in the Exemption Notification exempted *'Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility'* is exempt. By omitting the said entry, all "parking" will be liable to Service Tax. Therefore discussion made in the preceding paragraph is valid only upto 31.03.2013.

3 Issue of preferential location charges

3.1 Position of taxability during different periods

The following table exhibits the position of taxability in respect of preferential location charges during different time periods

Relevant period	Status of taxability
10.09.2004 to 30.06.2010	Not subject to Service Tax because these charges did not fall within the ambit of "Commercial or Industrial Construction Services", "Complex Construction Services" or "Management, Maintenance or Repair Services"

Relevant period	Status of taxability
01.07.2010 to 30.06.2012	These charges were brought within the ambit of Service Tax under the heading "Special Services provided by Builder or any person authorised by such Builder vide the then Section 65(105) (zzzzu) with effect from 01.07.2010. Before proceeding further, it will be worthwhile to refer to the following relevant taxable sub-clause: Taxable service means any service provided or to be provided to a buyer, by a builder of a residential complex, or a commercial complex, or any other person authorised by such builder, for providing preferential location or development of such complex but does not include services covered under sub-clauses (zzg), (zzq), (zzzh) and in relation to parking place. Explanation, For the purposes of this sub-clause, "preferential location" means any location having extra advantage which attracts extra payment over and above the basic sale price; – Section 65(105)(zzzzu). It is worth emphasising that the Department issued a detailed clarification [*Vide F.No, 334/1/2010 – TRU dated 26.02.2010*] in which it explained the rationale for bringing these charges within the purview of Service Tax. The foregoing clarification is given below for instant reference: Departmental clarification 8.1 Construction of commercial or industrial structures was brought under service tax net in 2004 while construction of residential complexes became a taxable service in 2005. The scope of the existing services includes construction, completion and finishing, repairs, alterations, renovation or restoration of complexes. It has been reported that in addition to these activities, the builders of residential or commercial complexes provide other facilities and charge separately for them and these charges do not form part of the taxable value for charging tax on construction. These facilities include,- (a) Prime/preferential location charges for allotting a flat/commercial space according to the choice of the buyer (i.e. Direction- sea facing, park facing, corner flat; Floor- first floor, top floor, Vastu- having the bed room in a particular direction; Number- lucky numbers); (b) Internal or external development charges which are collected for developing/maintaining parks, laying of sewerage and water pipelines, providing access roads and common lighting etc.; (c) Fire-fighting installation charges; and

Relevant period	Status of taxability
	(d) Power back up charges etc. 8.2 Since these charges are in the nature of service provided by the builder to the buyer of the property over and above the construction service, such charges are being brought under the new service. Charges for providing parking space have been specifically excluded from the scope of this service. Development charges, to the extent they are paid to State Government or local bodies, will be excluded from the taxable value levy. Further, any service provided by Resident Welfare Associations or Cooperative Group Housing Societies consisting of residents/owners as their members would not be taxable under this service. Inference: From the above, it can be safely inferred that Preferential Location Charges or Internal or External Development Charges were subject to levy of Service Tax from 01.07.2010 to 30.06.2012 at full rate i.e. without any kind of abatement if separate consideration was charged in respect of these charges.
From 01.07.2012 onwards	There can be following two broad possibilities regarding recovering these charges: (i) No Separate consideration If consideration in respect of Preferential Location Charges is not charged separately. In other words, consideration for these charges is clubbed with the charges for construction of a complex, building, civil structure or a part thereof. In this situation, abatement [exemption] of 75% (including land value) of the gross amount charged will be available. (ii) Separate Consideration If consideration in respect of these charges is charged separately. In this case, the amount charged on account of PLC is taxable at the full rate [which is presently 12.36%] and not at abated rate of 25% because of following reasons: (i) While rendering Preferential Location Services there is no transfer of material from the service provider to the service recipient. Abatement in Service Tax is granted only in respect of such services where there is transfer of materials. Thus, if Service Tax is allowed to be paid at abated rate in respect of PLC, it will go against the basic principle of granting abatement. (ii) "Construction of a Complex, Building etc" and "Preferential Location" are separate and different activities. Usually, all the houses/floors in a

Relevant period	Status of taxability
	complex/building may not have preferential location. Therefore, the builder may not charge PLC in respect of all the houses/floors. Thus, an inference may be drawn that "Construction of a Complex, Building etc." is an independent activity [service] in itself even without Preferential Location. On the other hand, it may also be argued that service tax should be levied at abated rate of 25% in respect of Preferential Location Charges [abbreviated as PLC]. According to this view, PLC fall within the ambit of clause (b) of Section 66E ie Construction of a complex, building, civil structure or a part thereof including a complex or building intended for sale to a buyer. Consequently, the amount charged on account of PLC will be put on the same pedestal on which amount charged for construction of a complex, building etc stands. Departmental clarification In a clarification [bearing F.No. V/ST/I/Tech-II/463/11 dated 31.08.2012] given to Maharashtra Chamber of Housing Industry, New Marine Lines, Mumbai-400020, Commissioner of Service Tax I, Mumbai has clarified as under: As per your letter, it has been mentioned that many builders charge additional amount known as "floor rise charges" in addition to the normal sale price of a flat. It is also mentioned in your letter that the said charges are recovered for additional construction for floor rise because the construction cost increases as per the increase in the floor. On this issue, it is clarified that, since the floor rise charges are recovered on account of additional construction cost, it would be treated as part of the consideration for sale of flat in terms of provisions of section 66F(Natural Bundled Service). Consequently, Floor Rise Charge would be eligible for the abatement of 75% in terms of Notification No. 26/2012-S.T. However, it is clarified that this clarification is limited to floor rising charges only and not for other components of erstwhile definition of "Preferential Location Service" which cover many other services.

Inference: From the above, it can be safely inferred that service tax should be charged at the full rate in those cases where separate consideration is charged for PLC irrespective of the status of intending buyer.

4 Surrender/ cancellation/ transfer/ buy-back/ re-selling of a fla before its completion

4.1 Surrender/cancellation of flat before its completion

Many times, a customer, at his own will, surrenders his booking to the concerned builder and the builder refunds either the entire amount paid by the customer along with Service Tax or he deducts stipulated amount in the name of 'Cancellation Charges' and refunds the remaining amount along with Service Tax. On the other hand, Cancellation of Flat takes place at the initiative of the builder consequent upon the default of the customer in making payment of the agreed installment(s). In case of cancellation, usually the builder deducts some amount as cancellation charges of the total amount paid by the customer and refunds the remaining amount to the defaulting customer. Thus, end result of both the surrender and cancellation is the same.

In both the situations of surrender and cancellation, the concerned builder can make adjustment of excess payment of Service Tax in terms of Rule 6(3) of the Service Tax Rules, 1994 which is given below for ready reference:

Where an assessee has issued an invoice or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee:-

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice has been issued.

In order to elucidate the issue of adjustment of excess payment of Service Tax following simple example is given:

Particulars	Amount/ date
XYZ Ltd. received an advance[which consists of ₹ 5,00,000 together with Service Tax on 25% of ₹ 5,00,000 which works out to ₹ 15,450) towards booking of a flat before issue of a completion certificate from a customer [say Mr. Utkarsh Kapoor] in April 2012	₹ 5,15,450
Date on which XYZ Ltd. deposited above-mentioned Service Tax to the credit of Central Government [along with its other Service Tax liability]	04.05.2012

Date on which Utkarsh Kapoor applied for cancellation of his booking of flat	16.06.2012
Date on which XYZ Ltd. accepted the application of Utkarsh Kapoor and refunded the amount of ₹ 5,15,450	25.06.2012

In the above example, it can be appreciated that XYZ Ltd. has received the specified payment [in the form of advance] of ₹ 5,15,450 from Utkarsh Kapoor against construction service to be provided which is not so provided by it wholly due to cancellation of booking of flat. However, XYZ Ltd. has already deposited service tax of ₹ 15,450 to the credit of Central Government on 04.05.2012. Thus, XYZ Ltd. can make adjustment of excess payment of Service Tax of ₹ 15,450 after it has refunded an amount of ₹ 5,15,450 to Utkarsh Kapoor on 25.06.2012. Thus, while discharging its service tax liability for the month of June 2012 [or in any subsequent month thereafter] XYZ Ltd. can make adjustment of excess payment of Service Tax of ₹ 15,450 against its service tax liability.

Effect of deduction of cancellation charges

In most of the practical situations, the builder does not refund full amount of advance received from the customer. In other words, while granting refund to the concerned customer, the builder usually deducts some amount in the name of 'Cancellation Charges'. The million-dollar question is whether such cancellation charges are subject to Service Tax. Since foregoing Cancellation Charges falls within the ambit of Section 66E(e) of the Finance Act, 1994, i.e., agreeing to the obligation to refrain from an act, or to tolerate an act or a situation or to do an act, these charges will attract Service Tax at the full rate [which is 12.36% at present]. Looking at it from another perspective Cancellation Charges do not figure either in Negative List of Services or Services in respect of which specific exemption has been granted by virtue of Notification No. 25/2012 dated 20.06.2012 and therefore, these charges will attract Service Tax.

Continuing with the above example, it is now assumed that XYZ Ltd. deducts ₹ 50,000 as cancellation charges from Utkarsh Kapoor at the time of granting him refund. Therefore, XYZ Ltd. will refund ₹ 4,63,905 [₹ 4,50,000 (₹ 5,00,000 – ₹ 50,000) + 13,905 (₹ 4,50,000 × 25% × 12.36%)]. In this situation, XYZ Ltd. can make adjustment of excess service tax paid to the extent of ₹ 13,905

Departmental clarification

The relevant extract of Departmental Clarification given vide Circular No. 151/2/2012-S.T. dated 10.02.2012, [It is worth highlighting that this Circular was issued before sea change in scope of Service Tax with effect from 01.07.2012. However, the Circular can still be relied upon as the same has not been withdrawn] is given below:

Para 2.3 Investment model: In this model, before the commencement of the project, the same is on offer to investors. Either a specified area of construction is earmarked or a flat of a

specified area is allotted to the investors and as it happens in some places, additionally the investor may also be promised a fixed rate of interest. After a certain specified period an investor has the option either to exit from the project on receipt of the amount invested along with interest or he can re-sell the said allotment to another buyer or retain the flat for his own use.

Clarification: In this model, after 01.07.2010, investment amount shall be treated as consideration paid in advance for the construction service to be provided by the builder/developer to the investor and the said amount would be subject to service tax. If the investor decides to exit from the project at a later date, either before or after the issuance of completion certificate, the builder/developer would be entitled to take credit under rule 6(3) of the Service Tax Rules, 1994 (to the extent he has refunded the original amount). If the builder/developer resells the flat before the issuance of completion certificate, again tax liability would arise.

4.2 Transfer of flat before its completion

It usually happens in the Real Estate Sector that a buyer [say Mr. A] agrees to buy a flat from the builder [say Raman Ltd.] on installments to be paid over three years. Further, the buyer after paying a couple of installments [but before completion of the flat] may agree to sell the said flat to another person [say Mr. B] for certain price. The remaining unpaid installments by the previous buyer will be paid by the subsequent buyer to the concerned builder.

The million-dollar question which needs to be examined is whether the previous owner is liable to charge service tax on the agreed price received from the second buyer? On a careful perusal of the relevant statutory provisions, it becomes clear that the previous buyer is not liable to charge service tax from the subsequent buyer because he is only transferring his interest in immovable property which does not attract Service Tax. In other words, the previous owner is not providing any kind of construction services to the subsequent buyer i.e. (transferee). In order to support the foregoing inference, the relevant extract of the Departmental Clarification dated 20.06.2012 in Service Tax Educational Guide is given below:

If the person who has entered into a contract with the builder for a flat for which payments are to be made in 12 installments depending on the stage of construction and the person transfers his interest in the flat to a buyer after paying 7 installments, would such transfer be an activity chargeable to service tax?

Such transfer does not fall in this declared service entry as the said person is not providing any construction service. In any case transfer of such an interest would be transfer of a benefit to arise out of land which as per the definition of immoveable property given in the General Clauses Act, 1897 is part of immoveable property. Such transfer would therefore be outside the ambit of' service' being a transfer of title in immoveable property. Needless to say that

service tax would be chargeable on the seven installments paid by the first allottee and also on subsequent installments paid by the transferee.

4.3 Buy-back of flat before completion

Sometimes the builder agrees to buy-back a flat before its completion from its customer. For instance, a Builder Ravi Ltd. has agreed to buy-back a flat before its completion from Mr. A [original customer] by agreeing to refund him the original amount collected from him. In this situation, as mentioned hereinabove, the said builder i.e. Ravi Ltd. can make adjustment of excess service tax paid by it in terms of Rule 6(3) of Service Tax Rules, 1994 because it has not provided any taxable service to Mr. A.

4.4 Re-selling of a surrendered/cancelled/bought-back flat

After surrender/cancellation/buying-back of a flat before its completion, the builder may re-sell the same either before obtaining a completion certificate from the competent authority in respect of said flat or after obtaining the said certificate. The service tax implications in respect of each of the said two options have been discussed with the help of above-mentioned example of Ravi Ltd.

Continuing with above mentioned example, if after buy-back of the above Flat, Ravi Ltd. may re-sell the same to Mr. B. Here, there can be following two possibilities:

(i) Ravi Ltd. agrees to re-sell the flat to Mr. B before obtaining a completion certificate from the competent authority in respect of said flat and Mr. B also pays some amount to Ravi Ltd before obtaining such completion certificate. In this situation, Builder Ravi Ltd. is bound charge service tax from Mr. B because it is providing taxable services of a construction of a building or part thereof to Mr. B.

(ii) Ravi Ltd. agrees to re-sell the flat to Mr. B after obtaining a completion certificate from the competent authority in respect of said flat. In this situation, Builder Ravi Ltd. need not charge service tax from Mr. B because it is not providing any taxable services to Mr. B. In fact, the builder is selling an immovable property to Mr. B which is not subject to Service Tax. During construction it was a self service as the flat was constructed by the builder for himself and there was no relationship of service provider and service recipient. Thereafter it is transaction of sale of immovable property by the builder to Mr. B which has been specifically excluded from the definition of service as provided under section 65B(44).

5 Issue of assured return

5.1 Meaning of assured return in the context of real estate sector

In these kind of projects, assured returns are given by the builders to the investor who invest in their under construction project and mostly these are commercial projects. In assured return project option builder undertakes to give monthly returns to the investors on the amount paid by the investor as down payment by means of post -dated cheques till such time the building is ready. It is also interesting to add here that concept of assured return in Real Estate Sector has become popular because properties appreciate at substantial rates which benefits the buyer. From the perspective of builders, they are able to sell their inventories with this kind of offers as home loans are not available on commercial projects. Therefore, by giving this kind of lucrative offer, they are able to sell their projects.

5.2 Service tax implications of assured return

Normally, in the construction industry the builders receive construction-linked payments from their customers and give no assured return to them. However, when builders want to receive more money from their customers as compared to proportion of construction completed then, they give the offer of assured return to their customers. It is to be noted carefully that in these kind of transactions the customers are the service providers and builders are service recipients. From the perspective of the Builders, payment of Assured Return to the concerned customers does not have any Service Tax implication because said payment is an expense for the builders. On the other hand, from the angle of concerned customers, receipt of assured return represents a consideration for providing services by way of extending deposits/ loans / advances. Resultantly, foregoing services of the customers fall within the ambit of Negative List of Services [vide Section 66D(n)(i) of the Finance Act, 1994 i.e. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. In simple terms, receipt of assured return by the concerned customers from the builders has no service tax implications as these are in the nature of interest only.

6 Issue of administrative charges/transfer charges/ restoration charges

This issue is closely associated with the above issue i.e. issue of Transfer of Flat by Buyer to another person before its completion. The Builder charges Administrative Charges/Transfer Charges for recording in his books the name of the new buyer in lieu of name of the earlier buyer whenever there is a transfer of flat by a buyer to another person before its completion and transferee applies to the builder to record his name in the Builder's Books. In different words, in his books of account, the builder deletes the name of the first allottee and record the name of the last transferee. For providing the foregoing services the builder charges some

amount under the caption of Administrative charges/Transfer Charges. Besides, Administrative charges are also collected by the Builder when flats are registered in the name of original allottee.

On the other hand, Restoration Charges are levied as penalty on the allottee in the case of restoring allotment which got cancelled due to default in his payment schedule.

The Position of Taxability of these charges has been discussed in the following table:

Relevant Period	Taxability Status
From 16.10.1998 to 30.06.2012	During this period there was a difference of opinion between the Department and the Relevant Assessees. The Department's View was that these services were taxable under the heading "Real Estate Agent's Services. On the other hand, the Relevant Assessees were of the belief that they did not provide any service within the capacity of a real estate agent or a real estate consultant, as the case may be, and therefore, the question of payment of service tax did not arise. Many cases in this regard are pending before different Tribunals. Here, it will be sufficient to refer to case of *Jaipuria Infrastructure Developers Pvt. Ltd. Vs C.S.T., Delhi* 2012 (25) STR 51 (Tri.-Del) wherein it has been held that, prima facie, administrative charges and restoration charges did not appear to be liable to tax under the entry for services of a Real Estate Agent because at the time of levying these charges the builder acts on his own behalf and not as agent of anybody else. However, at the time of charging transfer charges the property already belongs to the buyer and the tile is being transferred to a new person through the intermediary. Thus, partial stay has been granted. However recently in the case of M/S Ajay Enterprises argued by the author before CESTAT Delhi on 06.05.2013 full waiver of pre-deposit has been granted. No doubt that this is again a pre-deposit order and not a final order. Since the above-mentioned case is sub-judice, it will be better not to give any categorical comments on it, yet the case appears to be in favour of the assessee.
With Effect from 01.07.2012	Any activity carried out by a person for another for consideration falls within the ambit of term "Service". Thus, whatever activities are carried out by a service provider in lieu of charging Administrative Charges/Transfer Charges/ Restoration Charges, the same will fall within the purview of term 'service' and will be subject to service tax. Looking from a different perspective, service tax is no longer a service tax. It may be called an

Relevant Period	Taxability Status
	activity tax because of the definition of term 'service' as given under section 65B(44) of the Finance Act, 1994. The foregoing definition, inter alia, provides that "service" means any activity. Moreover, these charges are taxable because these do not fall within the purview of Section 66D [which deals with Negative List of Services] of the Finance Act, 1994. Further, no exemption has been granted in respect of these charges either under Notification No. 25/2012 dated 20.06.2012 or any other Notification.

7 Issue of valuation of completion and finishing services in the context of new construction of an immovable property

7.1 Meaning of "completion and finishing services"

The term "Completion and Finishing Services" in the context of immovable property has not been defined either under Finance Act, 1994 or any Rules made thereunder. However, in Notification No. 24/2012-S.T. dated 06.06.2012 [which deals with Service Tax (Determination of Value) Rules, 2012 and is effective from 01.07.2012] following illustrative examples of Completion and Finishing Services of an immovable property are given:

Glazing, Plastering, Floor and Wall Tiling, Installation of electrical Fittings

7.2 Valuation options

In Real Estate Sector, value of services of service portion in the execution of a works contract can be ascertained by either of the following two methods given vide Rule 2A of the Service Tax (Determination of Value) Rules, 2006:

(i) Gross Amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract

(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 40% 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 70% 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 60% of the total amount charged for the works contract.

7.3 Valuation of "completion and finishing services"

In order to apply the valuation method given under clause (i) of Rule 2A of Service Tax (Determination of Value) Rules, 2006, value of property in goods transferred in the execution of the said works contract must be known. If foregoing value is not known, then valuation has to be done in accordance with method given under clause (ii) of the said rules. If clause (ii) is read carefully, then it becomes clear that in the context of works contracts relating to an immovable property, Service Tax is required to be paid either on 40% or 60% of the total amount charged for the works contract. According to the opinion of the author, Service Tax in respect of Completion and Finishing Services in relation to original works should be payable on 40% of the total amount charged for the works contract because of following reasons:

(i) When completion and finishing services are provided or agreed to be provided in the context of construction of new building(s) or part thereof, then these become part and parcel of "new constructions" which, in turn, fall within the definition of term "original works" as given in Explanation 1(a) to Rule 2A of Service Tax (Determination of Value) Rules, 2006 [Notification No 24/2012 dt. 06.06.2012 w.e.f. 01.07.2012]. "According to said Explanation 1(a) the term "original Works", *inter alia*, means all new constructions. Therefore, service tax shall be payable on 40% of the total amount charged for the works contract.

(ii) The scope of term "Construction" cannot be restricted to merely putting up walls, roof and floor etc. In different words, completion and finishing services [such as glazing, plastering, floor and wall tiling, installation of electrical fittings] also fall within the ambit of term "Construction" which itself gets covered under the definition of term "Original Works".

(iii) *Notification No. 24/2012-S.T. dated 06.06.2012* uses the term "original works". Here, it is important to know the meaning of word "original" which is given below:

Meaning of word 'Original'	Relevant Source
Unique, Innovative, Novel, Inventive, New, Unusual	Oxford Advanced Learners' Dictionary [6th Edition]
You use original when referring to something that existed at the	Collins Co Build

Meaning of word 'Original'	Relevant Source
beginning of a process or activity, or the characteristics that something had when it began or was made.	Dictionary [2006 Edition]
1. Of or relating to an origin or beginning 2. Fresh and unusual; novel 3. Able to think of or carry out new ideas or concepts 4. Being that from which a copy, translation, etc., is made	The Free Dictionary By FARLEX
The first stage of existence; beginning.	Dictionary.com
Never having occurred or existed before; fresh; new; novel	Webster Dictionary

Inference: From the above table it can be safely inferred that in the context of an immovable property, the term 'Original' means a property which is a new one and never existed before.

Like-wise meaning of term 'New' is given in the following table:

Meaning of term 'New'	Relevant Source
Novel, Original, Fresh, Latest	Oxford Advanced Learners' Dictionary [6th Edition]
1. Something that is new has been recently created, built, or invented or is in the process of being created, built, or invented. 2. Something that is new has not been used or owned by anyone.	Collins Co Build Dictionary [2006 Edition]
Never existing before; appearing, thought of, developed, made, produced, etc. for the first time	Webster Dictionary

Inference: It can be safely inferred from the above table that in the context of an immovable property, the term 'New' means a property which has been built for the first time and it never existed before.

Thus, when interpreted harmoniously, both the terms 'original' and 'new' convey more or less same meaning in the context of an immovable property, i.e. a property which never existed earlier. When completion and finishing services are provided in relation to a new or original property, they become essential part of that property and therefore, service tax should be charged @ 40% of the total amount charged for the works contract.

On the other hand, the Department may take a view that completion and finishing services ought to be taxed @ 60% of the total amount charged for the works contract because of the following reasons:

(i) The term 'completion and finishing' is used in the context of a new immovable property. Looking from another angle, when 'completion and finishing services are provided in the context of an existing (old) building (immovable property), the same will fall within the ambit of term 'alteration'/'renovation'/' repair' of a building [immovable property].

(ii) The term 'completion and finishing' has been used in Part C of Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006. The foregoing Rule is given below for the sake of ready reference:

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 per cent 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.

Again, a careful perusal of above Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006 reveals that Completion and Finishing Services clearly get covered under Part C [although it has not been explicitly stated whether part C is applicable in case of new or old contracts]. Thus, in respect of such services, service tax shall be payable on sixty per cent of the total amount charged for the works contract.

7.4 Practical solution

In order to avoid any kind of litigation with the Department regarding the portion of the total amount of contract on which service tax is to be levied, it is suggested that the concerned contractee should give the entire contract [including completion and finishing services] to one particular contractor who should, in turn, give the sub-contract in respect of completion and finishing services to another person. In this way, even if the sub-contractor charges service tax

on sixty per cent the total amount charged, the main-contractor will be able to take CENVAT Credit in respect of the same as the same qualifies as 'input service' for the main contractor.

7.5 Conclusion

If completion and finishing services are provided in respect of an existing building, then there is no doubt that Service Tax shall be payable at the rate of sixty per cent of the total amount charged for the works contract. On the contrary, if completion and finishing services are provided in respect of a new building, then in the opinion of the author Service Tax shall be payable at the rate of forty per cent of the total amount charged for the works contract. However, the Department may take a view that completion and finishing services in respect of new building [original works] are subject to tax at the rate of sixty per cent of the total amount charged.

8 Issue of service tax liability on Build-Operate-Transfer (BOT) projects

8.1 Meaning of Build-Operate-Transfer projects

In the opinion of the Government, there are some infrastructural projects which are very vital for the development of the country. However, these projects involve huge capital outlays which Government can not afford to incur from its limited funds. Thus, Government or its authorised agency invites proposals from the private entrepreneurs for the following three-fold purpose:

(i) To build a required infrastructural project [for instance a particular National Highway] involving massive capital expenditure;

(ii) To operate the built infrastructural project for a specified period [which is normally thirty years];

(iii) To ultimately transfer the built infrastructural project to the Government or its authorised agency at the end of agreed period.

The above projects are referred as Build-Operate-Transfer Projects.

8.2 No. of parties involved and no. of contracts in case of BOT Projects

Following three parties are usually involved in a typical BOT Project:

(i) Government or its authorised agency

(ii) Concessionaire who may be Developer/Builder himself or an independent party

(iii) The actual users

As far as numbers of contracts involved in case of a characteristic BOT Project is concerned, normally following contracts are entered into:

(i) First contract is entered into between Government or its authorised agency and the Concessionaire whereby former party transfer to the latter party the right to use and/or develop the land for a stipulated period for construction of a road/building for furtherance of business or commerce either wholly or partly.

(ii) Second contract is entered into between a concessionaire and the relevant contractor, in those cases where concessionaire does not have experience and exposure in the construction sector. In these cases, contractor is engaged for constructing the required road/Building in respect of which right to use has been obtained in favour of the concessionaire.

(iii) Third contract is entered into between the concessionaire and several users for commercially exploiting the road/building developed or constructed by him during the lease period.

8.3 Service tax implications in respect of above three contracts

Kind of Contract	Service Tax Implications
First Contract between Government or its authorised agency and Concessionaire	Consideration for this contract is usually paid by the concessionaire to the Government or its authorised agency either in the form of upfront lease amount or in the form of stipulated annual charges. If, after analyzing the nature of relevant agreement, it becomes clear that Government or its agency is providing 'Renting of Immovable Property Services, then such services will fall within the scope of "Supports Services" provided by Government. However, it is worth highlighting here that Service Tax is required to be paid by the Government because provisions of Reverse Charge Mechanism [as given in Notification No. 30/2012-S.T. dated 20.06.2012 applicable with effect from 01.07.2012] do not apply in case of Renting of Immovable Property Services. In addition, it is also to be noted very carefully that concessionaire who has agreed to undertake the construction of a building [to be used wholly or partly for furtherance of business or commerce] on the land provided by the Government or its authorised agency will not be considered as a service provider because he is undertaking such construction on his own account and the ownership of the building vests in him during concession period.
Second Contract between Government	Where an independent contractor is engaged by the Concessionaire for undertaking the construction for him, Service

Kind of Contract	Service Tax Implications
and Contractor	Tax will be payable on the construction service provided by the contractor to the concessionaire. However, if the contractor provides services by way of construction, completion, repair, maintenance, renovation or alteration of a road, bridge, tunnel or terminal for road transportation for use by general public, then same will be exempted from Service Tax by virtue of Entry No. 13(a) of Notification No. 25/2012-S.T. dated 20.06.2012.
Third contract between Concessionaire and actual users	Depending upon nature of contract, services provided by the concessionaire to the actual users are liable to service tax.

Departmental clarification

The relevant extract of Departmental Clarification given vide Para 6.2.5 of Taxation of Services-An Education Guide dated 20.06.2012 is given below:

Many variants of this model are being followed in different regions of the country, depending on the nature of the project. Build-Own-Operate-Transfer (BOOT) is a popular variant. Generally under BOT model, Government, concessionaire (who may be a developer/builder himself or may be independent) and the users are the parties. Risk taking and sharing ability of the parties concerned is the essence of a BOT project. Government by an agreement transfers the 'right to use' and/or 'right to develop' for a period specified, usually thirty years or near about, to the concessionaire.

Transactions involving provision of service take place usually at three different levels: firstly, between Government and the concessionaire; secondly, between concessionaire and the contractor and thirdly, between concessionaire and users.

At the first level, Government transfers the right to use and/or develop the land, to the concessionaire, for a specific period, for construction of a building for furtherance of business or commerce (partly or wholly). Consideration for this taxable service may be in the nature of upfront lease amount or annual charges paid by the concessionaire to the Government. Such services provided by the "Government' would be in the negative list entry contained in clause (a) of section 66D unless these services qualify as 'support services provided to business entities' under exception sub-clause (iv) to clause (a) of section 66D. 'Support services have been defined in sub-section (49) of section 65B as 'infrastructural, operational, administrative, logistic marketing or any other support of any kind comprising functions that entities carry out in the ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works

contract, renting of movable or immovable property, security, testing and analysis'. If the nature of concession is such that it amounts to 'renting of immovable property service' then the same would be taxable. The tax is required to be paid by the government as there is no reverse charge for services relating to renting of immovable property. In this model, though the concessionaire is undertaking construction of a building to be used wholly or partly for furtherance of business or commerce, he will not be treated as a service provider since such construction has been undertaken by him on his own account and he remains the owner of the building during the concession period. However, if an independent contractor is engaged by a concessionaire for undertaking construction for him, then service tax is payable on the construction service provided by the contractor to the concessionaire.

At the third level, the concessionaire enters into agreement with several users for commercially exploiting the building developed/constructed by him, during the lease period. For example, the user may be paying a rent or premium on the sub-lease for temporary use of immovable property or part thereof, to the concessionaire. At this third level, concessionaire is the service provider and user of the building is the service receiver. Service tax would be leviable on the taxable services provided by the concessionaire to the users if the ingredients of taxability are present.

There could be many variants of the BOT model explained above and implications of tax may differ. For example, at times it is possible that the concessionaire may outsource the management or commercial exploitation of the building developed/constructed by him to another person and may receive a pre-determined amount as commission. Such commission would be a consideration for taxable service and liable to service tax.

9 Collaboration Agreement between developer and land owner - Issue of allotment of flats/ houses/ shops/ commercial units [built up area] to the land owner towards the land / development rights

9.1 Meaning of allotment of flats etc. to land owner and its taxability

In Real Estate Sector, the builders/developers normally agree to give some flats/houses/shops/commercial units to the concerned land owner(s) in lieu of getting land/development rights. Here, the first question which comes to the mind is whether such allotment of flats/houses etc. is subject to Service Tax. It is pertinent to note that in this case Builder/Developer is doing construction for the land owner and consideration in the form development rights are given to the builder/developer by the landowner before issuance of completion certificate by the competent authority in respect of such complex, building, civil structure or part thereof. Resultantly, such services provided or agreed to be provided by the

builder/developer fall within the purview of Section 66E(h) [which deals with Declared Services]of the Finance Act, 1994, i.e. Services in the execution of Works Contract, and will be subject to service tax.

9.2 Valuation of these construction services

Service Tax payable in respect of construction services in case of sale of flats/ houses/shops/commercial units to Land Owners will be determined in accordance with Rule 2A of Service Tax (Determination of Value), Rules, 2006.

Departmental clarification

The relevant extracts of Departmental Clarification given vide Para 6.2.1 and Para 6.2.3 of Taxation of Services-An Education Guide dated 20.06.2012 are given below:

> *What would be the liability to pay service tax on flats/houses agreed to be given by builder/developer to the land owner towards the land /development rights and to other buyers. If payable, how would the services be valued?*
>
> *Here two important transactions are identifiable: (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 (b) from other buyers: normally in cash.*
>
> *Construction service provided by the builder/developer is 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.*
>
> *It may be pointed out that in a recent judgment passed by the Mumbai High Court in the case of Maharashtra Chamber of Housing Industry and Others Vs Union of India [2012-TIOL-78-HC-Mum-ST] has upheld the Constitutional validity of levy of service tax, under clauses (zzzh) and (zzzzu) of section 65, on similar construction services provided by a builder. A relevant portion of the judgement is reproduced below-*
>
> *29. The charge of tax under Section 66 of the Finance Act is on the taxable services defined in clause (105) of Section 65. The charge of tax is on the rendering of a taxable service. The taxable event is the rendering of a service which falls within the description set out in sub-clauses (zzq), (zzzh) and (zzzzu). The object of the tax is a levy on services which are made taxable. The fact that a taxable service is rendered in relation to an activity which occurs on land does not render the charging provision as imposing a tax on land and buildings. The charge continues to be a charge on taxable services. The charge is not a charge on land or buildings as a unit. The tax is not on the general ownership of land. The*

tax is not a tax which is directly imposed on land and buildings. The fact that land is subject to an activity involving construction of a building or a complex does not determine the legislative competence of Parliament. The fact that the activity in question is an activity which is rendered on land does not make the tax a tax on land. The charge is on rendering a taxable service and the fact that the service is rendered in relation to land does not alter the nature or character of the levy. The legislature has expanded the notion of taxable service by incorporating within the ambit of clause (zzq) and clause (zzzh) services rendered by a builder to the buyer in the course of an intended sale whether before, during or after construction. There is a legislative assessment underlying the imposition of the tax which is that during the course of a construction related activity, a service is rendered by the builder to the buyer. Whether that assessment can be challenged in assailing constitutional validity is a separate issue which would be considered a little later. At this stage, what merits emphasis is that the charge which has been imposed by the legislature is on the activity involving the provision of a service by a builder to the buyer in the course of the execution of a contract involving the intended sale of immovable property.

30. Parliament, in bringing about the amendment in question has made a legislative assessment to the effect that a service is rendered by builders to buyers during the course of construction activities. In our view, that legislative assessment does not impinge upon the constitutional validity of the tax once, the true nature and character of the tax is held not to fall within the scope of Entry 49 of List II. So long as the tax does not fall within any head of legislative power reserved to the States, the tax must of necessity fall within the legislative competence of Parliament. This is a settled principle of law, since the residuary power to legislate on a field of legislation which does not fall within the exclusive domain of the States is vested in Parliament under Article 248 read with Entry 97 of List I.

Value, in the case of flats given to first category of service receiver will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly.

When a certain number of flats are given by the builder/ developer to a land owner in a collaborative agreement to construct, in lieu of the land or development rights transferred, will such transferee be required to pay service tax on further sale of flats to customers?

Yes. The service tax will be required to be paid by such transferee if any consideration is received by him from any person before the receipt of completion certificate.

10 Issue of service tax leviability in respect of redevelopment of existing building

10.1 Meaning of term 'redevelopment'

Since the word 'Redevelopment' has not been defined either under the Finance Act, 1994 or Rules made thereunder, it will be worthwhile to go through the following table which exhibits the meaning of term 'Redevelopment' as given in leading dictionaries:

Meaning of term 'Redevelopment'	Relevant Source
When **redevelopment** takes place, the buildings in one area of a town are knocked down and new ones are built in their place.	Collins Co Build Dictionary [6th Edition]
Rebuilding, Restoring or Improvement of an area, as of run-down houses	Webster's New World Dictionary and Thesaurus
Building again, Making extensive structural repairs on, Re-modeling/making extensive changes in	The Free Dictionary by FARLEX

Thus, it becomes clear from the above table that whenever a building is redeveloped, it means that the existing building will first be demolished and thereafter new building will be constructed.

10.2 Leviability of service tax during different periods

Relevant Period	Taxability Status
Position prior to 01.07.2010	Construction as well as Reconstruction Service provided by the builder/developer would not be taxable, in terms of **Board's Circular No. 108/02/2009-ST dated 29.01.2009**
Position from 01.07.2010 to 30.06.2012	Re-construction Services provided by the builder/ developers to the original owner(s) of the land would not be taxable because the reconstructed flats are for the personal use of original owners. The statutory definition of term 'residential complex' as given in Section 65(91a) inter alia provides that it **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. However, if additional flats are constructed and sold to persons other than original owners then the same will be subject to service tax if payment has been received before obtaining the completion certificate. **Departmental clarification** The relevant extract of Departmental Clarification given vides Para 2.2 of

Relevant Period	Taxability Status
	Circular No. 151/2/2012-ST dated 10.02.2012 is given below: Para 2.2 Redevelopment including slum rehabilitation projects: Generally in this model, land is owned by a society, comprising members of the society with each member entitled to his share by way of an apartment. When it becomes necessary after the lapse of a certain period, society or its flat owners may engage a builder/developer for undertaking re-construction. Society /individual flat owners give 'No Objection Certificate' (NOC) or permission to the builder/developer, for re-construction. The builder/developer makes new flats with same or different carpet area for original owners of flats and additionally may also be involved in one or more of the following: (i) Construct some additional flats for sale to others; (ii) Arrange for rental accommodation or rent payments for society members/original owners for stay during the period of re-construction; (iii) Pay an additional amount to the original owners of flats in the society. Clarification: Under this model, the builder/ developer receives consideration for the construction service provided by him, from two categories of service receivers. First category is the society/members of the society, who transfer development rights over the land (including the permission for additional number of flats), to the builder/developer. The second category of service receivers consist of buyers of flats other than the society/members. Generally, they pay by cash. (A) Taxability: (i) Re-construction undertaken by a building society by directly engaging a builder/ developer will not be chargeable to service tax as it is meant for the personal use of the society/its members. Construction of additional flats undertaken as part of the reconstruction, for sale to the second category of service receivers, will also not be a taxable service, during the period prior to 01.07.2010; (ii) For the period after 01.07.2010, construction service provided by the builder/developer to second category of service receivers is taxable in case any payment is made to the builder/ developer before the issuance of completion

Relevant Period	Taxability Status
	certificate. (B) Valuation: Value, in the case of flats given to second category of service receivers, shall be determined in terms of section 67(1)(i) of the Finance Act, 1994.
Position from 01.07.2012 onwards	According to Explanation II to Section 66E(b) of the Finance Act, 1994, the term 'Construction' includes additions, alterations, replacements or re-modelling of any existing civil structure. Further, definition of term 'Residential Complex' has also been changed with effect from 01.07.2012. According to clause 2(zc) of Notification No. 25/2012-S.T. dated 20.06.2012 'Residential Complex' means any complex comprising of a building or buildings have more than one single residential unit. And the term "single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family as per clause 2(ze) of Notification No. 25/2012-S.T. dated 20.06.2012. Reconstruction Services provided by the builder/developer who is engaged directly by the concerned building society [which consists of several members and each member is entitled to his share by way of an apartment] are taxable with effect from 01.07.2012 because, as explained above, the definition of term 'Residential Complex' has been changed. The specific exclusion for the personal use of residence is no longer available with effect from 01.07.2012. Departmental clarification The relevant extract of Departmental Clarification given vide Para 6.2.2 of Taxation of Services- an Education Guide dated 20.06.2012 is given below: Para 6.2.2 What would be the service tax liability in the following model - land is owned by a society, comprising members of the society with each member entitled to his share by way of an apartment. Society/individual flat owners give 'No Objection Certificate' (NOC) or permission to the builder/developer, for re-construction. The builder/ developer makes new flats with same or different carpet area for original owners of flats and additionally may also be involved in one or more of the following: (i) construct some additional flats for sale to others; (ii) arrange for rental accommodation or rent payments for society members/original owners for stay during the period of reconstruction; (iii) pay an

Relevant Period	Taxability Status
	additional amount to the original owners of flats in the society. Under this model, the builder/developer receives consideration for the construction service provided by him, from two categories of service receivers. First category is the society/members of the society, who transfer development rights over the land (including the permission for additional number of flats), to the builder/developer. The second category of service receivers consist of buyers of flats other than the society/members. Generally, they pay by cash. Re-construction undertaken by a building society by directly engaging a builder/developer will be chargeable to service tax as works contract service for all the flats built now. Similarly, in a clarification [bearing F. No. V/ST/I/Tech-II/463/11 dated 31.08.2012] given to Maharashtra Chamber of Housing Industry, New Marine Lines, Mumbai-400020, Commissioner of Service Tax I, Mumbai has clarified as under: Under Section 66E of the Finance Act, Construction Service has been notified as a declared service. Further, the exclusion clause of "intended for personal use of residence" as was available in the earlier definition is not available in the present definition. Therefore, it is clarified that even when Construction Service is provided to the existing flat owners or slum owners under a Scheme of Redevelopment or SRA Project, Service Tax would be liable to be paid for such services. In other words, even when the construction is made for the existing flats owners or slum owners for which no consideration or part consideration is paid to the developer, still Service Tax would be liable to be paid by the person who undertakes construction activity. For the purpose of valuation, provision of section 67 and Service Tax Valuation Rules may be referred.

10.3 Inference

From the above table, it can be safely inferred that whereas during the period beginning with 01.07.2010 to 30.06.2012 reconstruction services provided by the builder/developer who is engaged directly by the concerned building society [which consists of several members and each member is entitled to his share by way of an apartment] were not taxable as the definition of term 'Residential Complex' has been changed with effect from 01.07.2012 and the specific exclusion for the personal use of residence is no longer available with effect from 01.07.2012. Therefore with effect from 01.07.2012, these services have become taxable.

11 Issue of conversion of existing building for different use

11.1 Position of taxability during different periods

Relevant Period	Position of Taxability
From 01.07.2010 to 30.06.2012	Many times, a residential building is converted into a commercial shop or vice-versa. Mere change in the use of existing building does not attract any service tax liability if there is no involvement of any construction services at the time of change in use. However, if in order to facilitate the changed use of the building, services of the builder are availed, then such services will be subject to service tax under suitable category. Departmental clarification given vide Circular No. 151/2/2012-S.T. dated 10.02.2012 2.4 Conversion Model: Conversion of any hitherto untaxed construction/complex or part thereof into a building or civil structure to be used for commerce or industry, after lapse of a period of time. Clarification: Mere change in use of building does not involve any taxable service, unless conversion falls within the meaning of commercial or industrial construction service.
From 01.07.2012 onwards	As mentioned above, if there is no involvement of any construction services at the time of change in use, there is no question of any taxability. However, services of the builder are availed at the time of change in use, then such services will be subject to Service Tax. Departmental clarification given vide Taxation of Services-An Education Guide dated 20.06.2012 6.2.4 What would be the service tax liability on conversion of any hitherto untaxed construction of complex or part thereof into a building or civil structure to be used for commerce or industry, after lapse of a period of time? Mere change in use of the building does not involve any taxable service. If the renovation activity is done on such a complex on contract basis the same would be a works contract as defined in sub-section (54) of section 65B service portion, which would also be taxable if other ingredients of taxability are present.

12 Issue of sale of (developed) plots

12.1 Nature of activities covered

Many times, developers purchase a piece of land. Then, they develop said piece of land [by undertaking certain activities either themselves or through contractors] and sub-divide the same into suitable (marketable) size and sell those sub-divided plots to different purchasers.

12.2 Position of taxability during different periods

Relevant Period	Position of Taxability
Upto 30.06.2012	Non-taxable because transaction was in relation to sale of immovable property [in the form of developed plots] which was not subject to Service Tax. Looking from a different perspective as the transaction did not fall within the ambit of any of taxable sub-clauses of clause (105) of section 65 no service tax was payable. It is also important to mention here that developer of plot is developing such plots for himself and after developing the same selling it to buyer identified after the development of plots. However, it is worth highlighting that **if services of sub-contractors were availed for developing the piece of land and such services falls in any of the taxable sub-clause (as applicable during relevant period) then such services were taxable.**
From 01.07.2012 onwards	Since the activity basically involves sale of plot [whether developed or undeveloped], i.e. transfer of title in immovable property which is specifically excluded from the definition of service under section 65B(44), no service tax is leviable. In different words, in the activity of sale of plot there is no involvement of any service. Thus, there is no question of levy of Service Tax. It is important to mention here that developer of plot is developing such plots for himself and after developing the same selling it to buyer identified after the development of plots. In other words development of plot is in the nature of self service in the absence of service provider and service recipient relationship during the period of development of plot. However, it is worth highlighting that **if services of sub-contractors are availed for developing the piece of plot and such services are for consideration such services shall be taxable.** Moreover, said activity does not fall within the purview of any of the declared services u/s 66E pertaining to Real Estate. Such entries are reproduced hereunder for the ready reference of readers: -

Relevant Period	Position of Taxability
	(i) Renting of Immovable Property Services [Section 66E(a) of the Finance Act, 1994] (ii) 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 completion certificate by the competent authority [Section 66E(b) of the Finance Act, 1994] (iii) Service portion in the execution of a works contract [Section 66E(h) of the Finance Act, 1994]

Inference: From the above table, it can be safely inferred that activity of sale of [developed] plots has never been subject to Service Tax because it is considered as sale of immovable property and for the reasons explained in detail hereinabove. However, it is worth highlighting that if the developer avails the services of any other person for development of plots, then depending upon the nature of the relevant contract, services of such person may be taxable.

13 Issue of on-going contracts in respect of construction of residential complex on or after 01.07.2012

13.1 Definition of residential complex during different periods

Relevant Period	Relevant Section/Clause	Relevant Definition
From 16.06.2005 to 30.06.2012	Section 65(91a) of the Finance Act, 1994	"Residential Complex" means any complex comprising of- (i) a building or buildings, having more than twelve residential units; (ii) a common area; and (iii) 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 any authority under 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

Relevant Period	Relevant Section/Clause	Relevant Definition
		of the layout, and the construction of such complex is intended for personal use as residence by such person. Explanation.- For the removal of doubts, it is hereby declared that for the purposes of this clause,- (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;']
From 01.07.2012 onwards	Clause 2(zc) of Notification No. 25/2012-ST dated 20.06.2012	"Residential Complex" means any complex comprising of a building or buildings, having more than one single residential unit. Further, according to clause 2(ze) of Notification No. 25/2012-ST dated 20.06.2012 the term "single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

A careful perusal of above table reveals that a construction used to fall within the purview of 'residential complex' until 30.06.2012 if it contained more than 12 residential units. However, with effect from 01.07.2012, "Residential Complex" means any complex comprising of a building or buildings, having more than one single residential unit. Thus, the scope of term "Residential Complex" has been drastically condensed. As a result, it is quite possible that certain constructions [for instance, 5 residential units] which fell outside the scope of term of "Residential Complex" until 30.06.2012 would be subject to Service Tax with effect from 01.07.2012.

Furthermore, the position of taxability has to be examined in respect of following on-going contracts on 01.07.2012.

On-going contracts which were taxable both before and after 01.07.2012

Let us take the example of a contract in respect of construction of 100 residential units. Since these on-going contracts have been subjected to Service Tax both before and after 01.07.2012, there is no ambiguity regarding levy of service tax in respect of these on-going contracts.

On-going contracts which were exempt up to 30.06.2012 but have become taxable with effect from 01.07.2012

Let us take the example of a contract in respect of construction of 5 residential units which commenced before 30.06.2012 but completed on or after 01.07.2012. It is golden and settled position in service tax that taxable event is provision of service. If there is no provision of service, question of levy of service tax does not arise.

Hon'ble Apex Court vide its order dated 21.08.2007 in the case of All India Federation of Tax Practitioners Vs Union of India (7) S.T.R. 625 (S.C.) while dismissing the appeal of petitioner held as under:-

"In late seventies, Government of India initiated an exercise to explore alternative revenue sources due to resource constraints. The primary sources of revenue are direct and indirect taxes. Central excise duty is a tax on the goods produced in India whereas customs duty is the tax on imports. The word "goods" has to be understood in contradistinction to the word "services". Customs and excise duty constitute two major sources of indirect taxes in India. Both are consumption specific in the sense that they do not constitute a charge on the business but on the client. However, by 1994, Government of India found revenue receipts from customs and excise on the decline due to W.T.O. commitments and due to rationalization of duties on commodities. Therefore, in the year 1994-95, the then Union Finance Minister introduced the new concept of "service tax" by imposing tax on services of telephones, non-life insurance and stock-brokers. That list has increased since then. Knowledge economy has made "services" an important revenue-earner.

In the light of what is stated above, it is clear that Service Tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. Service tax is a value added tax.

As stated above, service tax is VAT. Just as excise duty is a tax on value addition on goods, service tax is on value addition by rendition of services. Therefore, for our understanding, broadly "services" fall into two categories, namely, property based services and performance based services. Property based services cover service providers such as architects, interior designers, real estate agents, construction services, mandapwalas etc. Performance based services are services provided by service providers like stock-brokers, practising chartered accountants, practising cost accountants, security agencies, tour operators, event managers, travel agents etc..

On the basis of the above discussion, it is clear that service tax is VAT which in turn is both a general tax as well as destination based consumption tax leviable on services provided within the country."

Hon'ble High Court of Gujarat vide its order dated 22.01.2009 in case of *CCE&C, Vadodra-II Vs Schott Glass India Pvt. Ltd.* [2009] 14 S.T.R. 146 (Guj.), while dismissing the appeal of revenue held as under:

"The taxable event in relation to Service Tax is admittedly the rendering of taxable service. Thus, neither the Section nor the Rule even suggests that the taxable event is the raising of an invoice for making of payment. It is well settled in law that a taxing statute has to be read and plain meaning assigned to the provisions without importing any extraneous consideration on a presumption".

Further, Hon'ble High Court of Calcutta vide its order dated 28.02.2005 in the case of *M.N. Dastur& Company Ltd. Vs UOI* [2006] 4 S.T.R. 3 (Cal.) while dismissing the appeal of assessee held as under:-

"According to the scheme of the Act, the tax is leviable on the provider of taxable service. The providing of the taxable service is taxable event. Under Section 68, every person providing taxable service is made liable to pay the tax."

Taxable event is providing the taxable service not receipt of payment

In addition to above Hon'ble High Court of Delhi, vide it's order dated 14.01.2013, in the case of *Commissioner of Service Tax Vs Consulting Engineering Services (I) Pvt. Ltd.* 2012-TIOL-60-HC-DEL-ST, while dismissing the appeal by Revenue, observed as follows:

"...Rule 5B of the Service Tax Rules, 1994 came into effect on 01.04.2011 and was out of the statute books on 01.07.2012. Section 67A of the Finance Act, 1994, was inserted in the said Act by virtue of the Finance Act, 2012 w.e.f . 28.05.2012. In the present case, the relevant period is April, 2003 to September, 2003. Therefore, none of the above provisions apply. Moreover, even Rule 4(a)(i) of the Point of Taxation Rules 2011 is not applicable because those Rules came into effect on 01.03.2011.

7. In the absence of any Rules, we will have to examine as to what is the taxable event. The taxable event as per the Finance Act, 1994 is the providing of the taxable service. In the present case, we find that not only were the services admittedly provided prior of 14.05.2003 but also the bills have been raised prior to 14.05.2003. The only thing that happened after 14.05.2003 was that the payments were received after that date. That, in our view would not change the date on which the taxable event had taken place. Since the taxable event in the present case took place prior to 14.05.2003, the rate of tax applicable prior to that date would be the one that would apply. In the present case, the rate of 5% would be applicable and not the rate of 8%. Consequently, we answer the question in favour of the respondent and against the appellant."

In a similar situation about two years ago Government issued Notification No. 36/2010-ST dated 28.06.2010 which, amongst other things, provided exemption to advance payment received prior to 01.07.2010 in respect of services which were either made taxable or their scope expanded by Finance Act, 2010.

It is worth highlighting that Government has not issued any Notification on the lines of Notification No. 36/2010 in 2012. However, Rule 5 of Point of Taxation Rules, 2011 specifically deals with payment of tax in case of new services. The said Rule 5 of Point of Taxation Rules, 2011 is given below for instant reference :

Rule 5 Payment of tax in case of new services-Where a service is taxed for the first time then –

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

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

Continued Exemption To On-Going Project

(a) Under service tax law, provision or rendition of services triggers the incidence of service tax and hence is to be treated as taxable event in the present scheme. In this regard, Supreme Court in *Association of Leasing & Financial Service Companies* - 2010-TIOL-87-SC-ST-LB has held that for levy of service tax the taxable event is the rendition of services.

(b) Further the circular 98/2007 had for construction contracts where tax paid under construction services prior to 1.6.2007 at para 097.03 / 04.01.08 clarified that vivisecting a single composite service and classifying the same under Works contract post 2007 depending upon the time of receipt of the consideration is not legally *sustainable*. Validity of circular upheld in Nagarjuna Constn. Co. Ltd. vs GOI(2012 (28) S.T.R. 561 (S.C.). Following this philosophy argument could be taken that exemption benefit [under law earlier to 1.7.2012] should be extended to the continuing contract.

(c) At the same time as this argument is not decided judicially till now maybe risky. Further after May, 2012 it is specifically set out in Section 67A that rate of service tax shall be the rate which was applicable at time service was provided or agreed to be provided. In other words, for ongoing projects tax rate applies at time when services is being provided.

13.2 Time limit for issuing an invoice, bill or challan

Rule 4A(1) of Service Tax Rules, 1994 provides, amongst other things, that every person providing taxable service shall not later than thirty days from the date of completion of such

taxable service or receipt of any payment towards the value of such taxable, whichever is earlier, issue an invoice, a bill or a challan.

However, according to third proviso to Rule 4A(1) of STR, 1994 in case of **continuous supply of service**, every person providing such taxable service shall issue an invoice, bill or challan within thirty days of the date when **each event** specified in the contract, which requires the service to make any payment to **service is completed**.

13.3 Definition of continuous supply of service

According to Rule 2(c) of Point of Taxation Rules, 2011 "continuous supply of service" means any service which is provided or to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time or where the Central Government by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

13.4 Practical example on Rule 5 of Point of Taxation Rules, 2011

Alka Ltd. agreed to provide services by way of construction of five residential units to Kirti for ₹ 60 lakh. Determine the service tax payable in each of the following independent cases on the assumption that construction of all five residential units is completed on or after 01.07.2012:

(a) Alka Ltd. issued invoice for ₹ 40 lakh on 17.06.2012 against which it received payment of ₹ 40 lakh on 29.06.2012.

(b) Alka Ltd. issued invoice for ₹ 40 lakh on 17.06.2012 against which it received payment of ₹ 32 lakh on 29.06.2012.

(c) Alka Ltd. received payment of ₹ 35 lakh on 28.06.2012 and it issued the invoice for the said ₹ 35 lakh on 10.07.2012.

(d) Alka Ltd. received payment of ₹ 35 lakh on 28.06.2012 and it issued the invoice for the said ₹ 35 lakh on 17.07.2012.

The amount of service tax payable in each of the above cases has been discussed below:

(a) In this case, no tax shall be payable to the extent of ₹ 40 lakh because both the events i.e. issue of the invoice and receipt of its full payment has taken place before 01.07.2012.

(b) In this case, no tax shall be payable to the extent of ₹ 32 lakh because although invoice has been issued for ₹ 40 lakh but payment has been received to the extent of ₹ 32 lakh before 01.07.2012.

(c) In this case, no tax shall be payable on ₹ 35 lakh received before 01.07.2012 because the company has issued the invoice before 14.07.2012.

(d) In this case, service tax shall be payable on ₹ 35 lakh received before 01.07.2012 because invoice has not been issued within 14 days from 01.07.2012.

14 Issue of free/concessional supply of goods or services by the contractee with effect from 01.07.2012

Many times, it is agreed between the contractee and contractor engaged in providing Works Contract Services that contractee will provide certain goods or services either free of cost or at concessional rates. In such goods or services have been provided free of cost then 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 will be added for the purpose of computing service tax liability under Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006. However, if the contractee has charged any amount for providing such goods or services, then that amount will be deducted for the purpose of computing service tax liability under foregoing Rule 2A(ii). In this regard, Explanation D of Rule 2A(ii) Service Tax (Determination of Value) Rules, 2006 is given below for ready reference:

"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.

Example 1:

(i)	Gross Amount charged for the works Contract	₹ 1,00,000
(ii)	*Add:* Fair Market Value of goods/services (supplied by the contractee)	₹ 70,000

(iii)	*Less:* The amount charged for such goods/services (supplied by the contractee)	₹ 10,000
(iv)	*Less:* the value of VAT, levied on goods supplied by the contractee	₹ 1,250
(v)	Total Amount (i) + (ii) –(iii)-(iv)	₹ 1,58,750

Further, according to Proviso to Explanation D, the fair market value of goods and services so supplied is required to be determined in accordance with the generally accepted accounting principles.

Example 2: [Rule 2A(ii)]

Continuing the Example 1, suppose total amount of ₹ 1,58,750 is towards:-

(a) The construction of shopping complex

(b) The amount received is towards the Annual Maintenance of Vehicles.

(c) The amount received is towards the Annual Maintenance & Repair of building.

Thus in this case,

(a) If total amount is towards the construction of shopping complex then Value of service portion is ₹ 63,500 i.e. (40% of ₹ 1,58,750). Accordingly service tax payable is ₹ 7,849 *i.e. (*12.36% × 63,500).

(b) If the amount received by Mr. A is towards the Annual Maintenance of Vehicles then Value of service portion is ₹ 1,11,125 i.e. (70% of ₹ 1,58,750). Accordingly service tax payable is ₹ 13,735 i.e. (12.36% × ₹ 1,11,125).

(c) If the amount received by Mr. A is towards the Annual Maintenance & Repair of building then Value of service portion is ₹ 95,250 i.e. (60% of ₹ 1,58,750). Accordingly service tax payable is ₹ 11,773 i.e. (12.36% × ₹ 95,250).

14.1 Departmental clarification

The department in Guidance Note-8 of Departmental clarification ''Taxation of Services - An Education Guide' dated 20.06.2012 clarified as follows:

8.2.3 How is the fair market value of goods or services, so supplied, be determined to arrive at the total amount charged for a works contract?

As per the proviso to Explanation 2 to clause (ii) of rule 2A of the Valuation Rules the fair market value of the goods or services so supplied shall be determined in accordance with the generally accepted accounting principles.

8.2.4. What are "original works'?

As per Explanation 1 to clause (ii) of rule 2A of the Valuation Rules 'Original works' means:

- *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.*

8.2.5 Can the manner of determination of 'total amount charged' be explained by way of a suitable example?

The manner of arriving at the 'total amount charged' is explained with the help of the following example pertaining to works contract for execution of 'original works'.

S.No.	Notation	Amount (in ₹)
1	Gross amount received excluding taxes	95,00,000
2	Fair market value of goods supplied by the service receiver excluding taxes	10,00,000
3	Amount charged by service receiver for 2	5,00,000
4	Total amount charged (1 +2 - 3)	1,00,00,000
5	Value of service portion (40% of 4 in case of original works)	40,00,000

Note: When the service provider pays partially or fully for the materials supplied by the service receiver, gross amount charged would inevitably go higher by that much amount.

15 Availability of CENVAT Credit to Land Owners in respect of the Service Tax paid to Builders/Developers on services provided by them under Collaboration Agreements

In Real Estate Sector, the builders/developers normally agree to give some flats/houses/ shops/commercial units to the concerned land owner(s) in lieu of getting land/development rights. Further, such flats/houses/shops/commercial units etc are either further sold by the Land Owners or kept by Land Owner for its personal use. The services of constructing such flats/houses/shops/commercial units etc for land owners fall under the ambit of Section 66E (h) of the Finance Act, 1994 i.e. services in execution of Works Contract. Thus, Service Tax is charged by such builder/developer from the Land Owners. The Question of consideration here is that whether CENVAT Credit shall be available to Land Owners in respect of such Service Tax paid by it to Builder/Developer.

As per the view of author, if such units/flats are not further sold by the Land Owners i.e. Land Owners is using such units/flats for personal purposes, then question of availment of CENVAT Credit does not arise at all. However, if such units are further sold by Land Owners (before issuance of completion certificate by the competent authority in respect of such complex, building, civil structure or part thereof), in that case such service of Land Owner shall be Taxable as per Section 66E(b) (Declared Services), of the Finance Act, 1994. Accordingly, Land Owner shall be eligible to avail CENVAT Credit of Service Tax paid on Input Services of Builders/Developers.

Further, it is pertinent to mention here that as per Rule 9 of the CNEVAT Credit Rules, 2004, proper Duty Paying document is needed on the basis of which CENVAT Credit can be availed. Thus, Landowners shall take proper Duty Paying Document e.g. invoice, bill etc from the Builders/Developers in order to legally avail the CENVAT Credit.

16 Point of Taxation in respect of services provided by Builders/ Developers to land owners under collaboration agreements

The services provided by Builders/Developers to Land Owners under Collaboration agreements, are covered under Entry No (h) of Section 66E of Finance Act 1994 i.e. "Services in the Execution of Works Contract" and such services are treated as Continuous Supply of Services as per Rule 2(c) of Point of Taxation Rules, 2011. Further, Rule 3 of Point of Taxation Rules, 2011 provides for determination of point of taxation in such type of services.

As per aforesaid Rule, Service Tax liability is to be discharged on completion of provision of service if invoice is not issued within 30 days (14 days up to 31.03.2012) of completion of provision of service. Further according to the Explanation to the aforesaid rule, if any consideration is received in advance towards the provision of taxable service, in that case the point of taxation shall be the date of receipt of such advance.

In case of services provided to Land Owners generally no invoice is issued by Builders to Land Owners thus the Point of Taxation is solely dependent on completion of provision of services. Thus, the moot issue for consideration is at what point of time services shall be deemed to be completed.

In this regard, we would like to advert the concept of "Principle of accretion" as envisaged by Hon'ble Apex Court at various instances in the case of works contract. The principle of accretion was reiterated after taking note of the 46th Amendment of the Constitution by another Constitution Bench of the Supreme Court in *Builders Association of India Vs Union of India* [1989] 73 STC 370. The Supreme Court observed at page 400 as follows:

"...After the 46th Amendment the works contract which was an indivisible one is by a legal fiction altered into a contract which is divisible into one for sale of goods and the other for supply of labour and services. After the 46th Amendment, it has become possible for the States to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts as stated above. It could not have been the contention of the Revenue prior to the 46th Amendment that when the goods and materials had been supplied under a distinct and separate contract by the contractor for the purpose of construction of a building the assessment of sales tax could be made ignoring the restrictions and conditions incorporated in Article 286 of the Constitution. If that was the position can the States contend after the 46th Amendment under which by a legal fiction the transfer of property in goods involved in a works contract was made liable to payment of sales tax that they are not governed by Article 286 while levying sales tax on sale of goods involved in a works contract? They cannot do so. When the law creates a legal fiction such fiction should be carried to its logical end. There should not be any hesitation in giving full effect to it. If the power to tax a sale in an ordinary sense is subject to certain conditions and restrictions imposed by the Constitution, the power to tax a transaction which is deemed to be a sale under Article 366(29A) of the Constitution should also be subject to the same restrictions and conditions. Ordinarily unless there is a contract to the contrary in the case of a works contract the property in the goods used in the construction of a building passes to the owner of the land on which the building is constructed, when the goods or materials used are incorporated in the building."

As per the aforesaid decision of Apex Court, in the case of Works Contract the transfer of property in goods takes place on the principle of accretion basis i.e. as the material is incorporated in the building, the property in respect of such material is transferred to the owner of land.

The aforesaid principle of accretion can also be applied in the case of Service Tax for determining the provision of services, since for the purpose of incorporating material; services of labour are also used or in other words in case of construction contracts supply of material and provision of services occurs simultaneously. Thus, at the time when material is incorporated in the building, it can be inferred that services have also been provided.

Thus, keeping in view Rule 3 of Point of Taxation Rules, 2011, Point of Taxation shall arise on the basis of material incorporated during the relevant period i.e. monthly, quarterly as the case may be.

Important Judicial Pronouncements

1. Treatment of Value of Material/Goods in the course of provision of service

(a) Value of material sold in the execution of works contract cannot be subject to service tax

Hon'ble Tribunal, Bangalore, vide it's order dated 01.09.2009, in the case of *Sobha Developers Ltd. Vs CCE & ST, Bangalore* 2010 (19) S.T.R. 75 (Tri. - Bang.), while allowing the appeal of the appellant, observed as follows:

> *"As clarified by the Deputy Secretary, Ministry of Finance, CBEC, exemption in respect of materials consumed/sold by the service provider to the service recipient providing taxable service is available if the service provider maintains records showing the materials consumed/sold while providing the taxable service. Interpreting the provisions of this notification, this Tribunal held that the notification did not require that the inputs used should be mentioned in the invoices/bills issued to the customers. The Tribunal held that exemption was admissible on the value of the goods consumed. Value of such goods consumed in the provision of service could not be included in the taxable value for levy of service tax. This was the ratio of the decision in Shilpa Colour Lab. Case (supra). The impugned order seeks to recover service tax on a portion of the contract amount relating to materiais consumed/sold in the course of provision of construction service. As rightly pointed out by the appellant, Clause 29-A of Article 366 of the Constitution provides that tax on the sale or purchase of goods includes, inter alia, 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..."*
>
> *"7. The mutual exclusivity of service tax and sales tax and the powers to tax assigned by the Constitution to the States and the Centre respectively on sales and services was highlighted by the Apex Court in the Gujarat Ambuja Cements Ltd. case (supra). The taxing powers of the Centre and States assigned in the Constitution have been restated by the Apex Court in the judgments cited by SDL. The different Governments viz. Centre and States cannot intrude on the jurisdiction of each other. The decision of the Commissioner to collect service tax on the value on which the appellants had already paid state VAT is contrary to the principles of fiscal federalism adopted in the Constitution. In the circumstances, we find that the impugned demand of differential duty relating to value of materials supplied in the course of provision of construction of commercial or industrial buildings and construction of residential complex services is not sustainable. Consequently the demand of interest and penalty also are also liable to the vacated. Accordingly, we vacate the impugned order and allow the appeals filed by SDL. As the appeal succeeds on this important legal question, we do not find it necessary to address other issues raised in the appeal."*

(b) Works contract/job work may not separately provide for sale of the goods but may be a composite amount for doing the work

Hon'ble High Court of Bombay, vide it's order dated 05.12.2012, in the case of *Almech Enterprise Vs Central Excise & Service Tax* 2013 (29) S.T.R. 21 (Bom.), while allowing the appeal by the appellant, observed as follows:

> *"7. We find that the Tribunal in the impugned order has proceeded on the basis that no evidence with regard to sale of goods and materials used in providing services was led by the appellant. This ignores the evidence led before the Commissioner in adjudication proceedings. We find that the evidence of the value of goods supplied was on record and the Tribunal has not taken even a prima facie view on the same. The works contract/job work may not separately provide for sale of the goods but may be a composite amount for doing the work. Therefore, the supply value of goods has to be understood in the context of the work contract/job work contract to determine whether it included in it also the sale of goods. Besides, it is the contention of the appellant that the demands are barred by limitation as well as the duty amount has been wrongly computed in the show cause notice and if the correct rate for Works Contract Services under the composition scheme at 4% is applied the appellant would be entitled to refund of service tax."*

(c) Hon'ble Tribunal, Chennai, vide it's order dated 10.09.2009, in the case of *M/s R.R. Treads Vs Commissioner of Central Excise, Madurai* 2009-TIOL-2137-CESTAT-MAD, while allowing the appeal by way of remand, observed as follows:

> *"2. Shri R. Thiagarajan, Ld. Advocate, appearing for the appellants states that the original authority had allowed the benefit of Notification No.12/2003-ST dated 20.06.2003 whereas, on revision, the Commissioner has denied the benefit. He states that the appellant's case is similar to the case of M/s. PLA Tyres Works Vs CCE (ST), Trichy - 2009-TIOL-304-CESTAT-MAD, under which the same issue has been decided by allowing the benefit of the cited Notification No. 12/2003. We find that in the cited case after taking into account the amount paid towards the sales tax in respect of the material component, the Tribunal has allowed the benefit of the cited notification No. 12/2003. As such, we set aside the impugned order and remand the matter to the Commissioner for a fresh decision in the light of the cited decision in the case of M/s. PLA Tyres Works Vs CCE (ST), Trichy (supra), the appellants will be at liberty to produce necessary evidence that they are paying sales tax on the material components. The appeal is thus allowed by way of remand."*

(d) Value of goods sold cannot be included in the value of taxable services

Hon'ble Tribunal, Chennai, vide it's order dated 16.12.2008, in the case of PLA Tyre Works Vs Commissioner of Central Excise (Service Tax), Trichy 2009 (14) S.T.R. 32 (Tri. - Chennai), while allowing the appeal of the appellant, observed as follows:

"...appellants ascertained the value of materials used for providing the service of re-treading from the MRF invoices under which materials were purchased, on an actual basis and the costs so arrived at works out to exactly 70% of the total bill amount. Purchase invoices of MRF for the entire period show that all the goods and materials were purchased from MRF and paid for by the appellants."

"The appellants were also filing sales tax forms to the Sales Tax Assessing Authority, Thanjavur Assessment Circle regularly during the relevant period. These forms show payment of re-sales tax at 1% in respect of re-tread tyres only on the cost of materials. Further, the 70:30 ratio was adopted by the appellants even before the introduction of service tax on the services of re-conditioning of tyres. All this would go to show that there was a sale of goods while rendering taxable services and, therefore, the benefit of Notification No. 12/03 dated 20-1-2003 providing exemption to cost of materials sold is available to the assessees. The finding of the Commissioner (Appeals) that bifurcation of receipts into an element of goods and the element of services does not arise, no longer reflects the correct legal position, in the light of the Apex Court decision in BSNL Vs Union of India 2006 (2) S.T.R. 161 (S.C.) wherein the apex Court has held that once it is possible to bifurcate any transaction into sales portion and service portion, the respective tax is to be levied on the respective portion only."

(e) Sale of goods and providing of service are to be segregated for proper taxation. Benefit of Notification No. 12/2003 cannot be denied if proper documentation to substantiate this claim is available

Hon'ble Tribunal, New Delhi, vide it's order dated 17.07.2009, in the case of *AGV ALFAB Ltd. Vs Commissioner of Service Tax, New Delhi* 2010 (19) S.T.R. 561 (Tri. - Del.), while waiving off the pre-deposit, observed as follows:

"...We have examined facts and figures of the appellant to appreciate the quantum of materials that was before authority for examination. Authority should have considered material component of the work by a thorough examination and should have come to conclusion as to the quantum of material and service involved for appropriate determination of taxability. That is not evident from record since it appears that the authority had made up its mind to ignore all pleadings of the appellant. Such conclusion is possible to be drawn from para 39 at page 87 of Order-in-Original. The authority had avoided exercise to pass an order raising a huge demand in this case.

6. Aforesaid observations enable us to grant interim relief to appellant which otherwise would cause public mischief. We are therefore not inclined to direct any pre-deposit at this stage in view of the finding made above. Accordingly waiver of pre-deposit during pendency of appeal is directed."

2. Treatment of Free of Cost Supply of Material at the time of availing abatement

(a) Hon'ble High Court of Delhi, vide it's order dated 22.05.2008, in the case of *Era Infra Engineering Ltd. Vs Union of India* 2008 (11) S.T.R. 3 (Del.), while disposing off the applications, observed as follows:

> *"10. Prima facie it appears to us that the Respondents cannot include in the gross amount charged any material that is supplied free of charge by NTPC or by any other party in respect of a contract of service.*
>
> *11. Our attention has been drawn to an order passed by the Madras High Court in M/s. Larsen and Toubro Ltd. Vs Union of India, Writ Petition No. 12691/2007 [2007 (7) S.T.R. 123 (Mad.)] (pages 37 to 39 of the paper book) wherein the Madras High Court has come to the prima facie view that insistence on value of goods supplied and provided free by the client of an assessee cannot be included for the purposes of calculating taxable service.*
>
> *12. In view of the facts that we have narrated above as well as the interim order passed by the Madras High Court, we are of the opinion that while the adjudication proceedings may go on and be concluded by the Respondents, they will not include for the purposes of determining the taxable service the supply of free material to the Petitioner and to this extent the Explanation appearing against Serial No. 7 in the table given in the Notification dated 1st March, 2006 will not be applied to the detriment of the Petitioner."*

(b) Hon'ble High Court of Madras, vide it's order dated 05.04.2007, in the case of Larsen & Tourbo Ltd. Vs Union of India 2007 (7) S.T.R. 123 (Mad.), while granting stay, observed as follows:

> *"It is contended by Mr. Arvind P. Datar, Senior Counsel that by taking clue from the explanation now added in Sl. No. 7 of the Notification No. 1/2006-ST dated 01-03-06, the respondents are insisting that the value of the goods supplied and provided by the client of the Assessee would also be included. On a reading of the explanation, this court is prima-facie of the view that such an insistence is not in accordance with the explanation. To that extent there will be an interim order as prayed for. Notice."*

(c) Hon'ble Tribunal, Ahmedabad, vide it's order dated 05.01.2010, in the case of *Jai Hind Projects Ltd. Vs Commissioner of Service Tax, Ahmedabad* 2010 (18) S.T.R. 650 (Tri. – Ahmd.), while rejecting the appeal of the appellant, observed as follows:

> *"it is clear that the materials/goods are provided by the service receiver and the said service provider has charged for the service portion only. Therefore, the value of the materials/goods has not been included. It was the appellant's contention that for the purpose of determination of liability of Service tax, the cost of the material supplied is taken as deemed sale and sales tax is charged accordingly. Therefore, it was their*

contention that they are liable for exemption since the goods/materials supplied by them while laying pipeline are to be treated as sold and therefore, they are eligible for exemption. It was their contention that these goods and materials supplied by them have to be treated as sale. It is quite possible that the Commissioner's observations flow from this claim made by the appellant. In any case, the fact remains that unless the goods are sold i.e. to say separate invoices are raised indicating the value of the goods and taxes payable thereon by the service provider to the service receiver, the benefit of Notification No. 12/03 cannot be availed. Therefore, just because for the purpose of Works contract after the amendment of constitution sales tax is leviable treating the items supplied as deemed sale, it cannot be said that the same principle can be applied for the purpose of Service tax unless the law provides for the same. It has to be noted that to treat the goods as deemed sale, constitution was amended. It is not clear from the records whether the appellants had included the cost of the material supplied or not while raising the bills and while paying the Service tax, but the main reason for the problem is that it was not relevant for the Revenue since they were required to pay Service tax on the full value of the contracts including the cost of the pipes provided by the receiver.

32. On the basis of discussion above, we conclude that if the value of the pipes which are used for selling pipes is not included, the appellants would not be eligible for abatement under Notification No. 15/04-S.T. as amended."

(d) Hon'ble High Court of Calcutta, vide it's order dated 21.08.2008, in the case of *Simplex Infrastructures Ltd. Vs Commissioner of Service Tax, Kolkata* 2010 (20) S.T.R. 607 (Cal.), while disposing off the application, observed as follows:

"...Submission is that a similar matter Era Infra Engineering Ltd. Vs Union of India, 2008 (11) S.T.R. 3 (Del.) the issue came up for consideration before the Division Bench of the Delhi High Court. At the prima facie stage the Division Bench was of the opinion that the respondents cannot include in the gross amount charged any material that is supplied free of charge by any party in respect of a contract of service and by an interim order directed that the adjudication proceedings may go on and be concluded by the respondents, but they will not include for the purposes of determining the taxable service the supply of free material to the petitioner and to that extent the Explanation appearing against Serial No. 7 in the table given in the Notification dated 1st March, 2006 would not be applied to the detriment of the petitioner. It is further submitted that the question of jurisdiction cannot be decided by the Assessing Officer."

"...prima facie case has been made out for passing an interim order. Therefore, considering the facts and circumstances of the case, let there be an interim order directing that the adjudication proceedings may go on and be concluded by the respondents but they will not include for the purpose of determining the taxable service the supply of free

material to the petitioner and to this extent the Explanation appearing against serial No. 7 in the table given in the Notification dated 1st March, 2006 will not be applied to the detriment of the petitioner. However, this order is passed without prejudice to the rights and contentions of the parties and subject to further orders that may be passed."

Frequently asked questions (FAQs)

FAQ 1. What is position of taxability in respect of services provided by way of construction of a road on or after 01.07.2012?

Reply 1 The position of taxability of services provided by way of construction of a road will depend on the use of road as shown in the following table:

If road is for use by general public*	Since exemption is available in respect of these services vide Serial No. 13(a) of Notification No. 25/2012 dated 20.06.2012 with effect 01.07.2012, no Service Tax is leviable.
If road is not for use by general public* for instance Road in a factory/ Residential Complex	This kind of road will not fall within the ambit of above-mentioned exemption. Resultantly, service tax is leviable in respect of these services.

*Meaning of term 'general republic: According to clause 2(q) of Notification No. 25/2012 dated 20.06.2012 "general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature.

FAQ 2. What was position of taxability of services provided in respect of vehicle parking upto 31.03.2013?

Reply 2 Notification No. 25/2012 dated 20.06.2012 provided exemption [vide serial no. 24] with effect from 01.07.2012 to services by way of vehicle parking to general public. On the other hand, if services in respect of vehicle parking [either covered or open] are given to particular individual(s) or particular group of people [for instance persons living in a particular building] then, benefit of aforementioned exemption cannot be availed and consequently Service Tax has to be paid. Further, services provided by way of leasing of space to an entity for providing such parking facility are also subject to service tax. However, it is worth highlighting this exemption has been withdrawn with effect from 01.04.2013.

FAQ 3. Mr. Naman booked a flat in July, 2013 [which will be constructed in due course of time] for ₹ 70,00,000. He paid an advance of ₹ 10,00,000 to the concerned builder in July 2012. Subsequently, in September 2013, Mr. Naman applied for cancellation of his flat. The builder accepted the cancellation application of Mr. Naman and refunded application money to him after retaining ₹ 30,000 as cancellation charges. Will foregoing cancellation charges be subject to Service Tax?

Reply 3 Since Cancellation Charges fall within the ambit of Section 66E(e) of the Finance Act, 1994 i.e. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation or to do an act, these charges will attract Service Tax at the full rate [which is 12.36% at present].

FAQ 4. DLF Ltd., a builder purchases [buy-back] its own flat [which has carpet area of less than 2000 square feet] before its completion from Mr. Prem and refunded the entire amount collected from him. Thereafter, DLF Ltd. sells the same flat to Mr. Raman Kapoor for ₹ 90,00,000. Whether any service tax should be collected by DLF Ltd. from Mr. Prem and Mr. Raman Kapoor?

Reply 4 Since DLF Ltd. has refunded the entire amount to Mr. Prem, it implies that Company has not provided any construction services to Mr. Prem. But better to pay service tax on consideration received from Mr Prem as it had received such amounts before completion certificate. When it refunds entire amount, it can avail credits of service tax paid to set off against future liability in line with Rule 6(3) of ST Rules. Resultantly, no service tax should be charged from Mr. Prem. Further, as question is silent regarding timing of sale of flat to Mr. Raman Kapoor, following two broad possibilities have been discussed:

If Flat is sold to Mr. Raman Kapoor **before** obtaining a completion certificate from the competent authority	Service Tax is leviable at abated rate of 25% in terms of Notification No. 26/2012 dated 20.06.2012 as amended by Notification No. 9/2013 dated 08.05.2013.
If Flat is sold to Mr. Raman Kapoor **after** obtaining a completion certificate from the competent authority	Service Tax is not attracted because it is a case of sale of immovable property.

FAQ 5. Mr. Pushkar booked a flat with Eros Ltd., a Real Estate Developer. However, before the completion of foregoing flat, Mr. Pushkar sold his interest in the Flat to Mr. Mayank for certain stipulated consideration in August 2013. When Mr. Mayank applied to Eros Ltd. for recording his names in its books in September 2013, the company demanded administrative [Transfer] charges of ₹ 40,000. Whether the foregoing Administrative Charges are subject to Service Tax?

Reply 5 Any activity carried out by a person for another for consideration falls within the ambit of term "Service". Thus, whatever activities are carried out by a Eros Ltd. in lieu of charging Administrative Charges [Transfer Charges], the same will fall within the purview of term 'service' and will be subject to service tax at full rate i.e. 12.36%.

FAQ 6. Certain Slum owners under a scheme of Redevelopment engaged a builder for providing Construction Service in September 2012 for a stipulated consideration of ₹ 20,00,000. Whether Service Tax would be leviable in respect of construction services provided to said slum owners?

Reply 6 Construction Service has been notified as a Declared Service under clauses (b) and (h) of Section 66E with effect from 01.07.2012. Further, the exclusion clause of "intended for personal use of residence" as was available in the erstwhile definition of 'Residential Complex' until 30.06.2012, is no longer available. As a consequence, Service Tax is leviable in respect of construction services provided to said slum owners under the description of "Service portion in execution of Works Contract". All new constructions fall within the ambit of term "original works" Explanation 1(a) to Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006 inserted vide Notification No. 24/2012 dated 06.06.2012. Therefore, service tax @ 12.36% shall be payable on 40% of the total amount charged for the works contract as per Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006. Resultantly, in the present case service tax liability works out to be ₹ 98,880 [₹ 20,00,000 X 40% X 12.36%]

FAQ 7. Rahim Ltd. purchased certain piece of undeveloped land in Haryana in July 2012. It spent ₹ 40,00,000 on the development of said land and thereafter sold the same in October 2012 in the form of six marketable plots to buyers @ ₹ 60,00,000 per plot. Whether Rahim Ltd.'s activity of sale of developed plots to various buyers will attract service tax?

Reply 7 Activity of sale of [developed] plots by Rahim Ltd. will not attract any service tax because the said activity tantamount to sale of immovable property which is not subject to service tax. However, it is to be kept in mind those service providers who are providing services to Rahim Ltd. in respect of development of such plots shall charge service tax from Rahim Ltd.

FAQ 8. Raj Jaggi Ltd., a famous builder and developer entered into an agreement with Mr. Sumit in May, 2012 for constructing four flats for him for an agreed consideration of ₹ 2,60,00,000. Mr. Sumit made payment in instalments as per following details:

Date of Receipt of Payment	Amount of Payment	Date of Invoice issued by Nikhil Ltd.
19.05.2012	₹ 30,00,000	10.05.2012
22.06.2012	₹ 40,00,000	10.06.2012
27.07.2012	₹ 50,00,000	10.07.2012
24.08.2012	₹ 80,00,000	10.08.2012
21.09.2012	₹ 60,00,000	10.09.2012

FAQ 9. Raj Jaggi Ltd. obtained completion certificate from the competent authority in respect of four flats on 08.09.2012. Whether services provided by Nikhil Ltd. to Mr. Sumit are subject to Service Tax?

Reply 9 The definition of term 'Residential Complex' has been changed with effect from 01.07.2012. Whereas up to 30.06.2012, "residential complex" means any complex comprising of a building or buildings, having more than twelve residential units under then Section 65(91a). However, with effect from 01.07.2012 according to clause (zc) of Notification No. 25/2012 dated 20.06.2012, "residential complex" means any complex comprising of a building or buildings, having more than one single residential unit.

Rule 5 of Point of Taxation Rules, 2011 becomes applicable in the present context. According to foregoing Rule 5 where a service is taxed for the first time then –

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

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

Therefore, in the present case, invoice has already been issued by Raj Jaggi Ltd., case (a) of Rule 5 of Point of Taxation Rules, 2011 will become applicable. Therefore, no Service Tax shall be payable to the extent of ₹ 70,00,000 for which invoice has been issued and the payment received prior to 01.07.2012.

Concluding Remarks

In this chapter, a modest attempt has been made to deal with significant issues in service tax in respect of construction activities and works contract. Practically, in addition to these significant issues, there may be host of other issues which will need a careful analysis before reaching any logical conclusion. Since financial stakes in case of Real Estate Sector are quite huge, it is advisable to take an expert opinion before reaching any decision.

Service Tax Voluntary Compliance Encouragement Scheme, 2013

The Hon'ble Minister made a candid revelation in the Parliament while presenting the budget for the Financial Year 2013-14. He declared:

> *"Where there are nearly 17,00,000 registered assessees under the service tax, only about 7,00,000 file returns. Many have simply stopped filing returns. We cannot go after each of them. Hence I propose to introduce a one-time scheme called 'Voluntary Compliance Encouragement Scheme'."*

1. Tax Dues [Sec. 105 – Definition]

   Tax dues means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.

2. Time period covered [1st October, 2007 to 31st December 2012]

3. Person who may make a declaration of tax dues [Sec. 106]

   Any person may declare his tax dues, in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the 1st day of March, 2013

4. Person in-eligible for making declaration:

4.1 Any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return.

4.2 Where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

5. Declaration liable for rejection:

Where a declaration has been made by a person against whom,—

(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of —

(i) search of premises under section 82 of the Chapter; or

(ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable to the Chapter under section 83 thereof; or

(iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or

(b) an audit has been initiated,

and such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

6. Immunity from penalty, interest and other proceedings [Sec. 108]

The declarant shall upon payment of the tax dues declared by him and the interest payable, if any, shall get immunity from penalty, interest or any other proceeding under the Chapter.

Subject to the Provision of Sec 111 of the said scheme, declaration shall become conclusive upon issuance of Form VCES-3 and no matter shall be re-opened under the chapter before any authority or court relating to the period covered by declarant.

7. Procedure for making declaration and payment of tax dues [Sec. 107 read with the Service Tax Voluntary Compliance Encouragement Rules, 2013 ('the said rules' here after)]

7.1 Declaration

The declaration under the Act, in respect of tax dues under the Scheme shall be made in Form VCES -1 (Rule 5 of the said Rules) to the Designated Authority ('DA' here after) on or before 31st day of December 2013.

7.2 Acknowledgment

The DA on receipt of declaration shall issue an acknowledgement thereof, in Form VCES -2 (Rule 5 of the said Rules), within a period of seven working days from the date of receipt of the declaration.

7.3 Payment

Payment of not less than fifty per cent. of the tax dues so declared should be made on or before the 31st day of December, 2013 and submit proof of such payment to the DA.

The tax dues or part there of remaining to be paid after the payment made shall be paid by the declarant on or before the 30th day of June, 2014.

7.4 Interest

On failure of payment of the above said tax dues or part thereof before the 30th day of June, 2014, the declarant shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

7.5 Cenvat Credit

The cenvat credit shall not be utilised for payment of tax dues under the Scheme.

7.6 Acknowledgment of Discharge

The declarant shall have to furnish to the DA, the details of payment made from time to time under this Scheme along with a copy Form VCES-2. On furnishing the details of full payment of declared tax dues and the interest, if any, the DA shall issue an acknowledgement of discharge of such dues to the declarant in Form VCES–3 (Rule 7 of the said Rules).

8. Service Tax for subsequent periods (i.e 1st day of January,2013 and onwards) shall be paid by the declarant in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.

9. Consequences

9.1 No Refund - Any amount paid in pursuance of a declaration made shall not be refundable under any circumstances [Sec 109].

9.2 Tax dues declared but not paid, either fully or in part, such dues along with interest shall be recovered under the provision of sec 87 of the chapter [Sec. 110].

9.3 Failure to make the true declaration [Sec 111]

Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.

Provided that, the said action shall not be taken after the expiry of one year from the date of declaration.

Service Tax Voluntary Compliance Encouragement Rules, 2013

Central Government vide Notification No. 10/2013-ST dated 13th May, 2013 has introduced "Service Tax Voluntary Compliance Encouragement Rules, 2013" as *Appendix 8*, regarding the form and manner of declaration, form and manner of acknowledgement of declaration, manner of payment of tax dues and form and manner of issuing acknowledgement of discharge of tax dues under the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

Gist of these rules is as under:

1. Every person wishes to make a declaration under the scheme shall take registration, if not already registered;
2. The declaration shall be made in Form VCES-1;
3. Designated Authority shall issue an acknowledgment in Form VCES-2 with a period of seven working days;
4. CENVAT Credit cannot be utilized for payment of service tax under this scheme;
5. Designated Authority shall issue an acknowledgment of discharge in Form VCES-3, with in a period of seven days from the date of furnishing of details of payment of tax dues in full along with interest, if any.

To further clarify the scope and applicability of the scheme CBEC has issued *Circular No. 169/4/2013-ST dated 13th May, 2013 and Circular No. 170/5/2013-ST dated 8th August, 2013 See Appendix 9*.

Other Miscellaneous Provisions

Special audit under Service Tax

A reference to Section 14AA is ***omitted*** since the said provisions are now contained in newly introduced Section 72A, whereby po*wers ar*e granted to the Commissioner of Central Excise to direct any person liable to pay service tax to get his accounts audited by a chartered accountant or cost accountant nominated by him if he has reasons to believe that such person-

(i) has failed to declare or determine the value of a taxable service correctly; or

(ii) has availed & utilized CENVAT Credit

(a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or

(b) by means of fraud, collusion, or any willful misstatement or suppression of facts; or

(iii) has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said commissioner.

- Such CA or CWA shall submit a report duly signed & certified to the said Commissioner within a specified period mentioning therein specified particulars.
- The Commissioner is empowered to order for such audit irrespective of the facts that the accounts of such person have been audited under any other law for the time being in force.
- The Commissioner shall give an opportunity of being heard to such person in respect of any material gathered on the basis of the audit and proposed to be utilized in any proceedings under the provisions of the Act.

Rectification of Mistake (Section 74)

As per sec 74 of the Act, if the prescribed officer can rectify the order if there is any mistake apparent from record. Rectification order can only be passed by the officer who has passed the order. Rectification order can be passed within 2 years from the date of original order. However, if the issue in appeal or has been settled no rectification of the same can be done.

Power to Search Premises (Section 82)

If the Joint Commissioner has reason to believe that any document or book or things, which in his opinion would be useful for or relevant to any proceedings under the Act are secreted in any place, he may authorize any Superintendent of Central Excise to search and seize such documents / books / things or commissioner may himself do it.

Best Judgement Assessment (Section 72)

Section 72 of the Act 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 in case where the assessee fail to assess tax properly or fail to furnish return itself they could face the risk a best judgment assessment.

There are no revisionary powers with commissioner, however Commissioner may on its own motion call for and examine the records of any proceeding in which order is passed by subordinate to him and in case he is not satisfied with the decision, he shall direct such authority or any central excise officer to apply to Commissioner (Appeals) for determination of such point arising out of the decision or order as the case may be.

Application of Certain Provisions of Act 1 of 1944

Section 83 is amended whereby following additional provisions of Central Excise Act, 1944 are made applicable to Service Tax.

Section of the CE Act, 1944	Particulars
31	Settlement Commission
32	
32A to 32P	
35EE	Revision by Central Government

Other changes

1. Advance Ruling

Section 96C(2)(e) is amended whereby Advance Ruling can also be sought for admissibility of credit of duty or tax in terms of CENVAT Credit Rules, 2004.

2. Retrospective exemption to "management, maintenance or repairs services"

I. Section 97 is inserted to give retrospective effect w.e.f. 16th June,2005 to the Notification No.24/2009-ST dated 27th July, 2009 granting exemption to taxable

services of "management, maintenance or repairs of road (Section 65(105)(zzg))" from the whole of the service tax.

Consequently, refund shall be granted for service tax levied during afore said period which otherwise would not have been so collected if the said exemption was in force at all material times. The claim for refund to be made within 6 months from the date of Presidential accent to Finance Bill, 2012.

Hon'ble Madras High Court in the case of Karvembu & Co. Vs UOI (2010) TIOL 676 has held that exemption granted by Notification No.24/2009-ST dt. 27/07/2009 to taxable services of management, maintenance or repairs of road from levy of service tax is only prospective and the same cannot be given retrospective effect in the absence of specific & express provision. It is for the Government to consider whether a notification should be given retrospectively, and if so, up to what period and unless it is so provided, the Tribunal or even the High Courts have no power to grant retrospectivity for a notification in the interpretation process.....The Hon'ble HC relied on the decision of *Larger Bench of Hon'ble SC in the case of CC Vs Spice Telecom (2006) TIOL 146.... in the absence of any express provision contained in the notification ordinarily, it cannot be presumed that the same is retrospective in nature.*

II. Section 98 is inserted whereby exemption from levy of service tax is granted retrospectively during the period from 16th June, 2005 till the notified date of enactment of negative list based taxation in respect of management, maintenance or repairs of non commercial government buildings.

Consequently, refund shall be granted for service tax levied during afore said period which otherwise would not have been so collected if the said exemption was in force at all material times. The claim for refund to be made within 6 months from the date of Presidential assent to Finance Bill, 2012.

3. Retrospective benefit to services rendered to developer/unit of SEZ

Rule 6(6A) was inserted by Finance Act, 2011 w.e.f. 1st March,2011 whereby provision of Rule 6(1) to Rule 6(4) are not applicable in case the taxable services are provided without payment of service tax to a developer/unit of SEZ for their authorised operations. The said amendment is granted retrospective effect w.e.f. 10th February, 2006.

Hon'ble Bangalore CESTAT in the case of Sobha Developers Ltd. Vs CCE-LTU, Bangalore (2011) TIOL 1170 has held that Rule 6(1) of CCR,2004 is not applicable in respect of services supplied to SEZ Units/Developers. Exemption available from maintaining of separate account is available only for export of goods to SEZ developer under Rule 6(6) of Cenvat Credit Rules, 2004. Export of Service Rules, 2005

specifically provides that export of service means export of service outside India and SEZ developer is not covered in it. There is a specific exemption Notification No. 4/2004-S.T. dated 31.3.2004 which exempted the taxable service provided in relation to various operations in SEZ and received by a developer or a unit of SEZ. The very fact that the Notification No. 4/2004 issued clearly shows that wherever the notification to exempt goods or provides specific concessions, provisions have been made in the relevant enactment. The fact that the Rule 6 covers export of goods to SEZ also supports this view. The services are allowed to be provided to SEZ units/ developer subject to conditions which are required to be fulfilled by SEZ developer/ unit. This is similar to erstwhile Chapter X Procedure in Central Excise Rules, 1944. The Notification No. 4/2004-S.T. dated 31.3.2004 is a conditional exemption and therefore, demand / restriction under Rule 6 of Cenvat Credit Rules, 2004 would not apply.

However, while granting the relief, in Para 16, the Hon'ble CESTAT declined to give retrospective effect to the amendment of insertion of Rule 6(6A) *vide* Notification No.3/2011-CE (NT) w.e.f. 1st March, 2011.

Appendices

Appendix-1

Possible Common Errors in Service Tax

The errors have been bifurcated into the errors in understanding the concepts, errors in systems and others as under:

Conceptual

This type of error tends to get accepted over a period of time if no issues arise there from.

1. Services provided outside India being considered as provided in India without reference to Place of Provision of Service Rules, 2012.
2. Services provided in India considered as provided outside India since the service provider is outside India.
3. Services received outside India booked as expenditure and Service Tax not paid.
4. Services, not being liable suffering the tax.
5. Services, which are specified and liable for tax not being considered as taxable and tax not discharged. This is by far the most dangerous. Many a times the associations in their anxiety to pro*vide* relief to their members take a view that the tax is not applicable and make representations. In case the representations fail (which is very often) the members would have to suffer the interest and a nominal penalty.
6. Incorrect methodology being adopted for composite services.
7. CENVAT credits (input credit or input services credit) missed out due to lack of knowledge on admissibility/ or clarified wrongly by departmental officers.
8. Input Credits not proportionately reduced for short payment. As department has often seen to raise eligibility issues on the short paid amounts.
9. Credits availed for inputs not used for manufacture of excisable items and non taxable services.
10. 100% credit taken instead of upto 50% allowed on capital goods.
11. Balance of 50% of credit on capital goods of previous year not taken in the subsequent year.
12. Error in classifying goods as input instead of capital goods.
13. Non admissible exemptions claimed. (conditions not fulfilled)

14. Credits on differential duty charged by the supplier by way of an invoice not being taken as inputs not received at that time, when such differential duty is charged.

15. 5% (now 6%) duty not reversed when both common inputs are used in manufacture of products, services, which are leviable to duty and exempt, when no separate accounts are maintained to distinguish usage.

16. Utlilisation for the payment of duty of credits availed in respect of the goods received after the relevant month but before the due date of payment.

17. The value adopted for payment of tax on the services without considering the re imbursements of related expenditure.

18. Frequent delays in taking the CENVAT credit necessitating the payment of tax in cash.

19. Inputs removed on payment of duty when actually the credit had not been taken on the receipt of the same materials.

Systems

The compliance procedures as well as the record keeping aspects have also been covered as under:

1. The procedure of ensuring that tax credit are examined for their eligibility and then only availed.

2. Having a proper system of ensuring completeness that credits have been taken on all payments for taxable services. Consequently no available credits missed out.

3. The system of double-check on credits to confirm whether short / excess availed.

4. Inquiry of instances of inordinate time gap between the bill date and the credit taken date especially on input services invoices dated after 1.4.2011.

5. The registration number not mentioned on the invoices.

6. The system of raising of invoice much prior to or after the date of service especially during year ends.

7. The absence of a system of recording entry in the job work control register when the capital goods are sent for service jobs.

8. The system of sending and receiving the materials without delivery challans/ documents.

Compliance Procedures- Omissions

1. The non-declaration by the assessee to the department about the records maintained by the assessee could allow the extended period of limitation being sought to be imposed and a valuable defense being lost.

2. The system to ensure returns are filed in time. The delay in filing of return on a few occasions or beyond a period would lead to the highlighting oneself for the departmental verification/ audit.

3. Failure to intimate the Department within 30 days of change in the constitution of the firm or company. Such intimation to be given by filing ST-1 online by using ACES utility for making amendment in particulars which is given in ST-2 certificate.

4. The system of acting on departmental views/ oral instructions, which are not provided in writing.

Appendix 2

Records Maintenance and Others

1. The system of reconciliation of credit figures as per accounts and the figures as per returns not done.

Following are some of the common accounting entries while accounting the service tax related transactions.

Sl.No	*Scenario*	*Relevant Rule*	*First Event*	*Subsequent Events*	*Point of Taxation*	*Accounting Entries*	*Accounting Entries*	*Accounting Entries*	*Note*
1	Normal situation (not covered under later rules)	3(a)	Issue of Invoice	Completion of service or receipt of advance payment	Time of Invoice	By Party A/c	To Service Charges	To Service Tax	
2		3(a)	Completion of service	Invoice issued within 30 days	Time of Invoice	By Party A/c	To Service Charges	To Service Tax	
3		*Proviso* to 3(a)	Completion of service	Invoice *not* issued within 30 days	Date of completion of service	By Party A/c	To Service tax		If amount not determinable at the time of

Sl.No	*Scenario*	*Relevant Rule*	*First Event*	*Subsequent Events*	*Point of Taxation*	*Accounting Entries*	*Accounting Entries*	*Accounting Entries*	*Note*
									completion of service, then pay the amount, on provision basis.
4		3(b) and *Explanation* to rule 3	Receipt of payment or advance	Invoice or completion of service	Time of receipt of payment, *to the extent of such payment*	By Bank A/c (advance)	To Party A/c	To Service Tax	
5	Continuous supply of service (applicable separately to each events as specified	*Proviso(i)* to 3(a) &(b)	Issue of Invoice	Completion of service or receipt of advance payment	Time of Invoice	By Party A/c	To Service Charges	To Service Tax	
6		*Proviso(i)* to 3(a) &(b)	Completion of service	Invoice issued within 30 days	Time of Invoice	By Party A/c	To Service Charges	To Service Tax	

Sl.No	*Scenario*	*Relevant Rule*	*First Event*	*Subsequent Events*	*Point of Taxation*	*Accounting Entries*	*Accounting Entries*	*Accounting Entries*	*Note*
7	in contract)	*Proviso(i)* to 3(a) &(b)	Completion of service	Invoice *not* issued within 30 days	Date of completion of service	By Party A/c	To Service Tax	how to determine the value of service, based on completion certificate from professionals	
8	Continuous supply of service (applicable separately to each	*Proviso(i)* to 3(a) &(b)	Receipt of payment or advance	Invoice or completion of service	Time of receipt of payment, *to the extent of such payment*	By bank A/c	To Party A/c	To service tax	

Sl.No	*Scenario*	*Relevant Rule*	*First Event*	*Subsequent Events*	*Point of Taxation*	*Accounting Entries*	*Accounting Entries*	*Accounting Entries*	*Note*
9	events as specified in contract) Taxable service provided *before* change in effective rate of service tax	4(a)(i)	Invoice issued and payment received after the change in effective rate	N.A	Date of receipt of payment or date of issuance of invoice, whichever is earlier	By Party A/c	To Service Charges	To Service Tax	or
10		4(a)(ii)	Invoice issued prior to change in effective rate	Payment received after change in effective rate of tax	Date of issue invoice	By Party A/c	To Service Charges	To Service Tax	old rate of tax
11		4(a)(iii)	Payment received before change in effective rate	Invoice issued after change in effective rate of tax	Date of receipt of payment	By Bank A/c	To Party A/c	To Service Tax	old rate of tax
12	Taxable service provided	4(b)(i)	Invoice issued prior to	Payment received after change in	Date of receipt of	Same as entry for Sl	new rate		

Sl.No	*Scenario*	*Relevant Rule*	*First Event*	*Subsequent Events*	*Point of Taxation*	*Accounting Entries*	*Accounting Entries*	*Accounting Entries*	*Note*
	after change in effective rate of service tax		change in effective rate of tax	effective rate of tax	payment	No 7			
13		4(b)(ii)	Invoice issued and payment also received prior to change in effective rate of tax	Taxable service provided	Date of receipt of payment of issuance of invoice, whichever is earlier				
14		4(b)(iii)	Payment received before change in effective rate	Invoice issued after change in effective rate	Date of issuing of Invoice	By Party A/c	To Service Charges	To Service Tax	new rate

Sl.No	*Scenario*	*Relevant Rule*	*First Event*	*Subsequent Events*	*Point of Taxation*	*Accounting Entries*	*Accounting Entries*	*Accounting Entries*	*Note*
15	New service brought under tax net	5(a)	Invoice issued and payment received before service became taxable	N.A	No service tax payable	By Party A/c	To Service Charges		
16		5(b)	Payment received before service became taxable	Invoice issued within 14days of provision of service	No service tax payable	By Party A/c	To Service Charges		
17	Services where tax payable by recipient of service under reverse charge	7(b)	Receipt of service	Payment made to service provider in advance or within six months of date of invoice of	Date of Payment	By Service Charges A/c	To Party A/c	By Service tax	To bank

Sl.No	Scenario	Relevant Rule	First Event	Subsequent Events	Point of Taxation	Accounting Entries	Accounting Entries	Accounting Entries	Note
				service provider					
18		7(b) and second provision to rule 7	Receipt of service	Payment not made to service provider within six months of date of invoice of service provide	As per rule 3,4,5, or 8 (as applicable). Interest would be payable.				
19	Professionals and firms providing specified taxable service	7(c)	Invoice, completion of service or receipt of payment in any sequence		Date of receipt of payment	By Bank A/c	To Service Charges	To Service Tax	
20	Service received from	Second provision to rule 7	Date of credit in books of	Date of making payment	Date of credit in books of	By Service Charges A/c	To Party A/c	By party a/c	By Service tax A/c

Sl.No	*Scenario*	*Relevant Rule*	*First Event*	*Subsequent Events*	*Point of Taxation*	*Accounting Entries*	*Accounting Entries*	*Accounting Entries*	*Note*
	associated enterprise when service provider outside India		accounts of person receiving service		account of person receiving service				
21		Second provision to rule 7	Date of making payment	Date of credit in books of account of person receiving service	Date of making payment	By Party A/c	To Bank	By Service tax A/c	To bank A/c
22	Intellectual Property Service (copyright,trade mark, design or patent), where considerati	8	Receipt of payment or benefit is received by service provider	Invoice issued by service provider	Receipt of payment or benefit is received by service provider	By bank A/c	To Party A/c	To Service Tax	

Sl.No	Scenario	Relevant Rule	First Event	Subsequent Events	Point of Taxation	Accounting Entries	Accounting Entries	Accounting Entries	Note
	on not ascertainable at the time of service								
23		8	Invoice issued by service provider	Receipt of payment or benefit is received by service provider	Invoice issued by service provider	By Party A/c	To Service Charges	To Service Tax	
24	Service completed on or before 30-6-2011	9	Issue of Invoice	Receipt of payment	Issue of invoce or date of receipt of payment, at the option of tax payer				

Appendix 3

Steps to be taken by Service Tax Auditor

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 not 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 (wherever 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 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. Wherever 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 nonfinancial 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.

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. These days, it is always preferable for the auditor to 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 programme 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 audit check list should indicate the areas to be covered and the individuals who are supposed to take it up. (See at end of topic)

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 likelyhood 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 by 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 pitfalls 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 with 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 by the assessee for the purpose of ensuring compliance with the law.

Appendix 4

Landmark Judgments in Service Tax

Levy of Service Tax:

1. Madurai District Central Co-operative Bank Ltd. V. Third Income-tax Officer, Madurai1975 AIR 2016, 1976 SCR (1) 136

The Apex Court has held that Parliament is competent to introduce a charging provision in a Finance Act. In the said judgment, it had been further held that even an additional charge (surcharge) can be levied by Finance Act for the purposes of the Union. Thus, the levy of a tax is totally in the hands of the legislature and it can do it for public good.

2. All India Federation of Tax Practitioners V. Union of India (UOI) [2007 (7) STR 625(SC)]

Held by the Court that service tax is a value added tax and is on commercial activities. Further, it was observed that Service tax is leviable only on services provided within the country and is on value addition by rendition of services.

3. Narne Construction P. Ltd. Vs UOI 2013 (29) S.T.R. 3 (S.C.)

Background: The company was engaged in the promotion of ventures for development of lands into house-sites. The company had undertaken to develop the plots and obtain permissions/approvals of the lay outs. Subsequent to the amounts paid by the purchasers the plots were developed.

Issue: Whether the company was, in the facts and circumstances of the case, offering any "service" to the purchasers within the meaning of the Consumer Protection Act, 1986 so as to make it amenable to the jurisdiction of the fora established under the said Act.

Held: Offer of plots for sale to customers / members with an assurance of development of infrastructure / amenities, lay-out approvals etc. was a 'service' under Section 2(1)(o) Consumer Protection Act, 1986.

Taxable Event:

1. Association of Leasing & Financial Service Companies vs. UOI 2010 (20) STR 417 SC

Financial leasing services - Hire purchase and equipment leasing - Constitutional validity of Service tax levy - Legislative competence of Parliament to levy Service tax on financial leasing

services including equipment leasing and hire-purchase - Article 366(29A) of Constitution of India is essentially sales tax specific and was brought to expand sales tax base by taxing mere delivery on hire purchase as deemed sale - Parliament not divested itself of the power to levy Service tax by said amendment to Constitution - Doctrine of pith and substance applicable and Service tax is a tax on activities - Equipment leasing and hire-purchase finance are activities of long term financing and are facilities/financial services falling within Banking and Other Financial Services - Such services rendered come within the expression "taxable services" as per Section 65(105)(zm) of Finance Act, 1994 - Impugned Service tax is not on material or sale but it is on activity of funding/financing of asset - Impugned tax not ceases to be Service tax nor does it become on hire-purchase/leasing transactions under Article 366(29A) ibid read with Entry 54, List-II merely because finance/interest charges are taken into account for valuation purpose and merely because Service tax is imposed on financial services with reference to hiring/interest charges - State Legislature competent to impose tax on sale by legislation relatable to Entry 54 of List-II of Seventh Schedule to the Constitution and tax on aspect of services not being relatable to any entry in the State List, is within the legislative competence of Parliament under Article 248 ibid read with Entry 97 of List-I of Seventh Schedule - Articles 248 and 366(29A) ibid - Sections 65(12) and 65(105)(zm) ibid. [paras 18, 29, 30, 32, 37, 39, 40]

Banking and Other Financial Services - Hire purchase and lease - Funding or financing by Non-Banking Financial Companies (NBFCs) by giving loans, or equipment leasing or hire-purchase finance falls in the category of financial services and such activity is in relation to the hire-purchase or lease transaction - Elements of finance lease or loan transaction different from those in equipment leasing/hire-purchase agreements between owner (lessor) and hirer (lessee) - Service tax levy intended to tax financial facilities extended to customers by the NBFCs under Section 66 of Finance Act, 1994 as they come under Banking and Other Financial Services under Section 65(12) ibid -Finance lease and hire-purchase finance squarely come under the expression "financial leasing services" in Section 65(12) ibid - Such services rendered come within the expression "taxable services" as per Section 65(105)(zm) of Finance Act, 1994 - Sections 65(12) and 65(105)(zm) ibid. [paras 20, 21, 37]

Banking and Other Financial Services - Equipment leasing and hire purchase finance - Circulars issued by Reserve Bank of India show that equipment leasing and hire-purchase are activities undertaken as business by Non-Banking Financial Companies (NBFCs) which are regulated as para-banking activities by the RBI - Activities supra are financing activities encompassed under Section 45-I(c)(i) of RBI Act, 1934 and constitute "rendition of services to its customer" which is the taxable event under Section 65(105)(zm) of Finance Act, 1994 - Activities of equipment leasing and hire-purchase finance undertaken by NBFCs are facilities extended to customers and they are financial services rendered by NBFCs falling within

"banking and other financial services" - Section 45-I(c)(i) of RBI Act, 1934 - Sections 65(12) and 65(105)(zm) of Finance Act, 1994. [para 18]

Valuation - Financial leasing and hire purchase - Lessor merely finances the equipment/asset which the lessee is free to select, order, take delivery and maintain - Lessor arranges and accepts the invoice from the vendor and pays him - Amount received as principal is not the consideration for services rendered - Income earned by lessor by way of finance/ interest charges in addition to the management fees or documentation charges, etc. - Such charges treatable as consideration for services and the income constitutes the value of taxable services on which Service tax is payable - Exemption from Service tax to financial leasing services including equipment leasing and hire-purchase on taxable value comprising of 90% of the amount representing as interest provided under Notification No. 4/2006-S.T. - Service tax payable only on 10% of interest portion - Section 67 of Finance Act, 1994. [paras 32, 37]

Service v. sale - Equipment leasing and hire purchase - Leased assets required to be shown as "receivables" and not as fixed assets - Equipment leasing and hire-purchase finance are financial facilities and Service tax levied on these services as taxable services - Service tax on said activities is not a tax on material or sale - Impugned Service tax different and distinct from tax on sale of goods under Entry 54 List-II of the VIIth Schedule to the Constitution - Sections 65(12) and 65(105)(m) of Finance Act, 1994. [para 19]

Taxable event - Service tax - Rendition of service is the taxable event for Service tax - Section 66 of Finance Act, 1994. [para 19]

Banking and Other Financial Services - Scope of - Funding activity undertaken by financing party in the form of loan or equipment leasing or hire-purchase financing, exigible to Service tax if such activity falls in the category of Banking and Other Financial Services under Section 65(12) of Finance Act, 1994. [para 20]

Leasing and hire purchase - Service tax v. Sales tax - Financing transaction and equipment leasing/hire-purchase transaction are two different and distinct transactions - Financing transaction exigible to Service tax under Section 66 of Finance Act, 1994 whereas the latter exigible to local sales tax/VAT - Section 66 ibid. [para 20]

Service tax and Sales tax - Nature and character of - Service tax is a tax on activity whereas Sales tax is a tax on sale of a thing or goods - Value of taxable service is not determinative of character of levy - Sections 66 and 67 of Finance Act, 1994. [paras 22, 39]

Constitution of India - Interpretation of taxing entries - Entry 97 of List-I with Article 246(1) of Constitution of India confers exclusive power first, to make laws in respect of matters specified in Entries 1 to 96 in List-I - Secondly, it confers residuary power of making laws by Entry 97 - Article 248 ibid not provides for any express powers of Parliament but only for its residuary power - Article 248 adds nothing to the power conferred by Article 246(1) ibid read with Entry

97, List-I - Entry 97, List-I which confers residuary powers on Parliament provides "any other matter not enumerated in List-II and List-III including any tax not mentioned in either of those lists" - Word "other" is important and it means "any subject of legislation other than the subject mentioned in Entries 1-96" - Articles 246 and 248 ibid. [para 36]

Interpretation of statutes - Wide interpretation, exception thereto - Principle that legislative entries must be given the widest interpretation is subject to the exception that where the entries use legal terms, they must be given their legal meaning. [para 23]

Words and phrases - Hire purchase and equipment leasing - In the bailment termed "hire" bailee receives both possession of the chattel and the right to use it in return for remuneration- Equipment leasing is long term financing which helps the borrower to raise funds without outright payment in the first instance. [para 21]

Words and phrases - Finance lease and operating lease - A finance lease transfers all the risks and rewards incidental to ownership, even though the title may or may not be eventually transferred to the lessee - Lessee could use the asset for its entire economic life and thereby acquires risks and rewards incidental to the ownership of such assets in financial lease - Finance lease is a financial loan from the lessor to the lessee - Tax-based financial lease, a leverage lease and an operating lease are different types of financial leases - Operating lease is a lease other than the finance lease. [paras 20, 32]

2. CCE&C, Vadodra-II Vs Schott Glass India Pvt. Ltd. [2009] 14 STR 146 (Guj.)

The taxable event in relation to service tax is admittedly the rendering of taxable service.

3. Delhi Chit Fund Association vs UOI (2013-TIOL-331-HC-DEL-ST)

Background: The petitioner was an association of chit fund companies based in Delhi. The said association had filed writ petition before the High Court of Delhi to quash the 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 to the extent of 70% of the consideration received for the services. Contending that there is no question of exempting a part of the consideration received for the services in chit fund business when the law provides that such services are not taxable at all in the first place.

Issue: Whether the services rendered in connection with a chit business are taxable services or not.

Decision: H'ble High Court of Delhi allowed the writ

(a) Quashing Sl .No. 8 of notification No.26/2012-ST dated 20-6-2012.

(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.

(c) The services rendered by the foreman of the chit business for which a separate consideration is charged, 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.

Rate & Payment of Service Tax:

1. Commissioner Vs Advantage Media Consultant- 2009 (14) S.T.R. J49 (SC) Commissioner Vs Maruti Udyog Ltd. 2002(141) ELT 3 (SC)

Receipts to be taken as cum-duty value when service tax is not paid separately by customer.

2. Tempest Advertising (P.) Ltd. Vs CCE&C, Hyderabad-II [2007] 8 STJ 354 (CESTAT-Bangalore)

Liability to pay service tax only on the value of taxable services calculated as per the provisions of the Finance Act, 1994 and not on the amount reflected in Income Tax Returns or any other statute.

3. Delhi Chartered Accountants Society (Regd) vs UOI and Ors(2013-TIOL-81-HC-Del-ST)

Background: Service tax authorities rely on two circulars issued by TRU Circular no.154 dated 28.3.2012 and 158 dated 8.5.2012 which says in case of 8 specified services[including chartered accountants services] provided by individuals or proprietary firms or partnership firms and in case of services wherein tax is required to be paid on reverse charge by service receiver, if payment is received or made as case maybe on or after 1st April, 2012, the rate of service tax applicable will be 12% and not 10%.

Issue: The rate of service tax for the services provided by the Chartered Accountants prior to 1.4.2012 and the invoice also issued prior to 1.4.2012 but payment received after 1.4.2012?

Decision: It was 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%.

4. Nagarjuna Construction Co. Ltd. Vs. Government of India [2012-TIOL-107-SC-ST].

Background: The Appellant executed various contracts which were in the nature of composite construction contracts. Prior to 01-06-2007 Appellant had paid service tax under the following the categories of Erection and commissioning, Commercial construction and Construction of residential complex service. While paying the service tax (prior to 01-06-2007) under the above mention categories, the appellant had opted to claim the benefit of Notification No. 1/2006-S.T, paying service tax only on 33% of the total value, subject to the condition of non-availment of CENVAT Credit on Inputs, capital goods and input services..

Issue: With effect from 01-06-2007, the Central Government introduced the works contract (Composition Scheme for payment of Service Tax) Rules, 2007. Under this scheme an option of composition was offered at 2% of the gross amount charged on the works contract. The appellant opted to pay service tax under the new scheme. The issue was whether the Appellant was eligible to convert to the new scheme and pay tax at the rate specified in the new scheme.

Held: The 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 for payment of Service Tax) Rules, 2007 ["the Composition Scheme Rules"] can be exercised. Assessee who wants to avail of benefit of payment of service tax as per Rule 3 of the 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.

Obligation to pay - Liability of Service tax: Service Provider/ Service Recipient:

1. Pearey Lal Bhawan Association Vs M/s Satya Developers Pvt. Ltd. (2011-TIOL-114-HC-DEL)

Tax liability - Renting of immovable property for business purposes - Maintenance of leased premises by lessor - Agreement with lessee providing that lessor was liable for taxes, entered before 1-6-2007 when Finance Act, 1994 was amended to introduce levy of Service tax - HELD : Service tax was a species of levy which parties had not envisioned while entering into their arrangement - Object of levy of tax is service, and levy is indirect, meaning thereby that user has to bear it, by including it in cost of service - In that view, lessee was liable to pay the tax - This position found to be supported by Sections 12A of Central Excise Act, 1944, prescribing that provider of goods/service had to indicate quantum of tax in invoice, Section 12B ibid thereof prescribing that seller is deemed to have passed on full incidence of duty/tax

to buyer, and Section 64A of Sale of Goods Act, 1930 prescribing that in case of imposition of tax after making of a contract, seller is entitled to be paid such tax. [paras 14, 15, 16, 17, 18]

2. Thermal Contractors Association Vs. Director, Rajya Vidyut Utpadan Limited (2006-4-STR-18-Allhabad HC)

Tax liability - Service Tax - Payer of service tax though entitled to realise service tax from its customers, yet it all depends upon contracts entered into between parties - Service provider free to charge or not to charge amount of service tax from its customers and to pay it from its own pocket - Prayer, that petitioner's association is entitled to realise amount of service tax from its customers, the respondent No. 2 is obliged to pay service tax, cannot be acceded to in absence of any contract having been filed along with petition - Section 68 of Finance Act, 1994 as amended by Finance Act, 1997 read with Rule 2(1)(d)(4) of Service Tax Rules, 1994. [para 5]

3. Devyani International Ltd. Vs. UOI (2011-22-STR-262-Kar HC)

Writ Petition - Maintainability and locus standi - Service tax - Renting of immovable property service - Challenge to levy - Locus standi to challenge levy - Petitioner a tenant, a lessee of the schedule premises - Tenant not a service provider - Privity of contract between landlord and tenant - Whether landlord collects rent/tax and pays to Revenue or pays out of rent amount without passing liability, a different aspect - Petitioner not a service provider hence having no locus standi to challenge imposition of Service tax on renting - Petitions disposed of as not maintainable - Section 65(105)(zzzz) of Finance Act, 1994. [para 3]

Valuation

1. AGGARWAL COLOUR ADVANCE PHOTO SYSTEM Vs. COMMR. OF C. EX., BHOPAL 2011 (23) S.T.R. 608 (Tri. - LB)

Valuation (Service Tax) - Photography - Papers, consumables and chemicals used to bring photograph into existence - Recipient of photograph does not go to buy these items, does not make separate payments for them - He only expects photograph - In that view, fact that Notification No. 12/2003-S.T. granted exemption of value of goods/materials used in production of photograph found to be immaterial, and value of photograph held to include all elements used to bring it to deliverable state - Service tax found to be leviable on gross value of photographic service, and more so as it is not a composite contract of sale of goods and service - In that view, Supreme Court decision in Surabhi Color Lab followed in Technical Color Lab departed from as it was found to be based purely on incorrect clarification issued by officer of CBEC, which furthermore, could not be relied on in law - Apex Court decision in C.K. Jidheesh [2006 (1) S.T.R. 3 (S.C.)] followed, especially as several High Courts had given similar opinions - Section 67 of Finance Act, 1994. [paras 21, 23]

Valuation (Service Tax) - Consideration for services - Agreement between parties to deal with it - HELD : Such agreement does not affect incidence of Service tax - It is insignificant in law as to the manner recipient and provider of taxable services mutually arrange their affairs for their benefit to deal with consideration - Section 67 of Finance Act, 1994. [para 17]

Valuation (Service Tax) - Cost to make services reach consumer - All of them are includible in valuation of services, since Service tax is destination based consumption tax - Section 67 of Finance Act, 1994. [para 17]

Exemption (Service Tax) - Photograph - Goods/materials sold by service provider (photographer) to recipient - HELD : Term 'sold' in Notification No. 12/2003-S.T., has to be read with 'sale' in Central Excise Act, 1944 - It does not include 'deemed sale' - in that view, only value of goods/materials sold separately by service provider (photographer) are covered by Notification ibid - Burden to prove such sale, value of goods/materials with specific documents, and fulfilment of condition of notification that credit of duty has not been availed, is on assessee. [paras 17, 18, 19, 22]

2. Intercontinental Consultants And Technocrats Pvt Ltd vs. UOI & Anr [2012-TIOL-966- HC-DeI-ST]

Background: Assessee rendered consultancy services and receives payments not only for its service but is also reimbursed expenses incurred by it such as air travel, hotel stay, etc.

Issue: It was not paying any service tax in respect of the expenses reimbursed by the clients. Whether for valuation reimbursements is includible in assessable value.

Held: H'ble High Court of Delhi held that:

a. In the valuation of the taxable service, nothing more and nothing less than the consideration paid as quid pro quo for the service can be brought to charge.

b. Rule 5 of Valuation Rules, purports to tax not what is due from the service provider under the charging Section, but it seeks to extract something more from him by including in the valuation of the taxable service the other expenditure and costs which are incurred by the service provider "in the course of providing taxable service".

c. What is brought to charge under the relevant Sections is only the consideration for the taxable service. By including the expenditure and costs, Rule 5(1) goes far beyond the charging provisions and cannot be upheld.

Export of Services:

1. ABB India Ltd. Vs. CST (2008) 17 STT 233 (CESTAT)

Question of delivery is decided leniently and treated as export of service for booking sales orders in India for company situated in Singapore

2. Lenovo (India) Pvt. Ltd. v. CCE (Appeals-II) & Ors. 2009 – TIOL – 911 –CESTAT – DEL

Rebate - Export of service - Rebate of Service tax paid on commission received under Business Auxiliary Services - Impugned order rejecting rebate on the ground that promotion of sale of products undertaken in India and exemption under Export of Services Rules, 2005 not applicable - Services provided to person outside India on receipt of sales commission - Services of procurement of order and forwarding the same to principal in Singapore - Identical issue settled in favour of assessee in 2009 (13) S.T.R. 65 (Tribunal) by holding that recipient of service being overseas company, service not delivered in India - Impugned order set aside - Rule 5 ibid. [paras 2, 5.1, 5.2, 5.3]

3. Microsoft Corporation (India) Private Ltd. Vs. Commissioner of Service Tax & Anr. (AIT -2009- 418 Delhi HC)

Stay/Dispensation of pre-deposit - Export of Services - Business Auxiliary Services - Technical support services including marketing provided to Singapore subsidiary by Indian subsidiary of holding company in U.S.A. and commission received therefor - Impugned Tribunal order directing pre-deposit of ₹ 70 crores - Principles applicable while dealing with stay application as per Supreme Court judgments considered and various points discussed in detail by Tribunal while taking prima facie view - Singapore subsidiary provides services to petitioner and vice versa - Indian consumers pay for services which go out to holding company and part of it comes back to India in the shape of commission - Economic and commercial activities also take place in India -Both sides have arguable case and final determination to be made only by Tribunal - All necessary parameters kept in mind by Tribunal and equitable order passed - Not a fit case to exercise writ jurisdiction - Petitioner granted four weeks time to make deposit as directed by Tribunal - Section 35F of Central Excise Act, 1944 as applicable to Service tax *vide* Section 83 of Finance Act, 1994. [paras 1, 11, 13, 15, 16]

Appellate Tribunal's order - Equitable order - Quantum of pre-deposit - Tribunal in exercise of discretion, directing pre-deposit of ₹ 70 crores and stay of balance amount of around ₹ 300 crores granted - Supreme Court judgments laying down principles to be kept in mind while considering stay applications, considered by Tribunal - Reliance by Tribunal on Supreme Court ruling in 2009 (237) E.L.T. 3 (S.C.) holding that merely on showing prima facie case, interim order of protection not to be passed, sustainable - Detailed discussion by Tribunal on various points while taking prima facie view - Necessary parameters for deciding applications

for stay/waiver of pre-deposit kept in mind by Tribunal - Impugned Tribunal order is an equitable order and sustainable - Section 86 of Finance Act, 1994. [paras 13, 14, 15, 16]

4. COMMR. OF C. EX., MYSORE Vs. CHAMUNDI TEXTILES (SILK MILLS) LTD. 2010 (258) E.L.T. 141 (Tri. - Bang.)

Refund - Cenvat credit of Service tax - Refund of Cenvat credit of Service tax on input services used in export goods - Not necessary that refund should be filed in same month when credit taken - There is a natural time lag between the two - After input services are used, goods have to be exported and then refund filed - If credit is admissible in a particular month, it will be admissible in preceding and succeeding months also - CBEC has prescribed time-limit of one year for filing claims on quarterly basis - Exporter can claim refund after nine months, which will obviously not relate to export of goods in same month - Not the case of Revenue that assessee had accumulated credit which they could have used for their DTA clearances - Ratio of export turnover is relevant only in case of substantial clearances to DTA - Rule 5 of Cenvat Credit Rules, 2004. [para 4]

Cenvat credit of Service tax - Input services - Credit of Service tax paid on consultancy services received for acquisition of business outside India - Company yet to be acquired and not known whether any company would be acquired or not - Absence of details of consultancy service, service not related to business activity - Cenvat credit claim fairly given up - Rule 2(l) of Cenvat Credit Rules, 2004. [para 5]

Cenvat credit of Service tax - Customs House Agent service - Exporter is entitled to take credit on Service tax - Rules 2(l) and 3 of Cenvat Credit Rules, 2004. [para 7]

Cenvat credit of Service tax - Authorised Service Station service - Servicing of car - Exporter is entitled to take credit of Service tax paid on it - Rules 2(l) and 3 of Cenvat Credit Rules, 2004. [para 8]

Cenvat credit of Service tax - Documents for availing credit - Invoices relating to export of services - In absence of specific evidence as to services on which credit was inadmissible, it could not be denied to assessee - Rule 9 of Cenvat Credit Rules, 2004. [para 9]

Cenvat credit - Goods supplied to SEZ - Credit can be taken of duty paid on them - Rule 3 of Cenvat Credit Rules, 2004. [para 10]

Appeal by Department - Grounds - Grounds not raised in show cause notice, cannot be taken before Tribunal - Section 35B of Central Excise Act, 1944. [para 4]

Cenvat credit - Availment of - Invoice raised on agent of assessee who had discharged liability which would have otherwise been discharged by them - Assessee could not be denied credit - Rule 9 of Cenvat Credit Rules, 2004. [para 6]

Import of Service:

1. Indian National Ship owners Association (2009) 18 STT 212 BOM HC DB

Import of Services - Liability of recipient - Date of effect - Service tax not leviable under Rule 2(1)(d)(iv) of Service Tax Rules, 1994 on petitioners as impugned demand related to service received by vessels and ships outside India - Person providing service alone regarded as an assessee as per Chapter V of Finance Act, 1994 - Rule 2(1)(d)(iv) ibid cannot be framed as not to carry the purpose of the Chapter V ibid - Services provided to petitioners outside India became taxable service as per Explanation to Section 65(105) ibid but charge being on service provider, petitioners not liable - Law laid down in Laghu Udyog Bharati case [2006 (2) S.T.R. 276 (S.C.)] applicable to Rule 2(1)(d)(iv) ibid - Statutory provision absent before enactment of Section 66A of Finance Act, 1994 - Recipient in India liable to Service tax for service received from abroad only from 18-4-2006 after enactment of Section 66A ibid - Sections 65(105), 66, 66A, 68(2) and 73 ibid - Rule 2(1)(d)(iv) ibid. [paras 16, 17, 18, 19, 20, 21]

Import of Services - Liability of recipient - Rules cannot be made to make service recipient liable when Finance Act, 1994 makes service provider liable - Rule 2(1)(d)(iv) of Service Tax Rules, 1994 is invalid. [para 17]

Demand (Service tax) - Liability of recipient - Demand of Service tax from service recipients based on Notification No. 1/2002-S.T. - Service rendered in Continental Shelf, Exclusive Economic Zone and Territorial Waters of India taxable under notification ibid - Impugned notification not having effect of levying Service tax on service recipients - Demand without authority of law - Section 66 of Finance Act, 1994. [paras 6, 16]

Cenvat Credit:

1. ABB LTD. Vs. COMMISSIONER OF C. EX. & S.T., BANGALORE 2009 (15) S.T.R. 23 (Tri. - LB)

Cenvat credit of Service tax - Input service - Goods Transport Agency service - Outward freight for transportation of final product from place of removal whether an input service - Expression “activities relating to business” covers transportation upto customer’s place and word “relating” widens scope - Credit not deniable relying on coverage of outward transportation upto place of removal in inclusive clause - No restriction on “activities relating to business” being related to main or essential activities - All activities relating to business fall under input service - Input service not restricted to services specified after expression “such as” as it is purely illustrative - Transportation of goods to customer’s premises is an activity relating to business and credit of Service tax thereon admissible - Rules 2(l) and 3 of Cenvat Credit Rules, 2004. - We also note that transportation of goods to customer’s premises is an

activity relating to business. It is an integral part of the business of a manufacturer to transport and deliver goods manufactured. If services like advertising, market and research which are undertaken to attract a customer to buy goods of a manufacturer are eligible to credit, services which ensure physical availability of goods to the customer i.e. services for transportation should also be eligible to credit. [paras 1, 3, 4, 12, 13, 14, 15, 25]

Cenvat credit of Service tax - Input service - Outward transportation - No requirement that cost of freight to be included in transaction value of manufactured goods for admissibility of credit of Service tax on outward transportation - Valuation of excisable goods not involved - Valuation and Cenvat credit are independent of each other and have no relevance to each other - Service tax and excise duty being consumption taxes borne by consumer, Service tax levy on transportation will become tax on business if credit denied - Interpretation of "input service" cannot fluctuate with change in definition of "value" under Section 4 or Section 4A of Central Excise Act, 1944 or tariff value under Section 3 ibid - Sections 3, 4 and 4A ibid - Rule 2(l) of Cenvat Credit Rules, 2004. [paras 18, 19, 21, 22]

Cenvat credit of Service tax - Input service - Definition of input service in Rule 2(l) of Cenvat Credit Rules, 2004 having different limbs providing independent benefit - Credit admissible if one limb is satisfied even if others are not satisfied - Rule 2(l) ibid. - To illustrate, input services used in relation to setting up of, modernization, renovation or repairs of a factory will be allowed as credit, even if they are assumed as being an activity relating to business. [para 4]

Cenvat credit of Service tax - Input service - Interpretation of Rule 2(l) of Cenvat Credit Rules, 2004 - Expression "outward transportation" used in inclusive clause by way of abundant caution to avoid dispute based on "means clause" - Transportation within a factory covered by inclusive clause - Freight from depot to customer's premises covered under "service used directly or indirectly or in relation to clearance from place of removal" where depot is place of removal as also from factory to customer's premises - Rule 2(l) ibid. [para 17]

2. COCA COLA INDIA PVT. LTD. Vs. COMMISSIONER OF C. EX., PUNE-III 2009 (242) E.L.T. 168 (Bom.)

Interpretation of - Definition of input service using terms "means", "includes" and "such as" - Expression "means" and "includes" exhaustive - Services which may otherwise not within ambit of definition clause included by use of "includes" and these are made exhaustive by word "means" - Words "such as" illustrative and not exhaustive and refer to services related to business in the context of business - Rule 2(l) of Cenvat Credit Rules, 2004. [paras 23, 24]

Cenvat credit of Service tax - Input service definition - Interpretation of term "business" - Expression "business" is an integrated/continuous activity and not confined or restricted to mere manufacture of product - Activities in relation to business can cover all activities related

to functioning of a business - Term "business" cannot be given restricted definition to say that business of manufacturer is to manufacture final products only - "Business" is of wide import in fiscal statutes - Rule 2(l) of Cenvat Credit Rules, 2004. [para 25]

Cenvat credit of Service tax - Input service - Burden of Service tax borne by ultimate consumer and not manufacturer or service provider - Cenvat credit on input stage goods and service admissible as long as connection between such goods and services is established - Any input service that forms part of value of final product should be eligible for Cenvat credit - Rule 2(l) of Cenvat Credit Rules, 2004. [para 34]

Cenvat credit of Service tax - Input service - Definition of input service containing five categories or limbs - Credit admissible if any one of the limbs satisfied even if other limbs are not satisfied - Rule 2(l) of Cenvat Credit Rules, 2004. - To illustrate input services used in relation to setting up, modernization, renovation or repairs of a factory will be allowed as credit, even if they are assumed as not an activity relating to business as long as they are associated directly or indirectly in relation to manufacture of final products and transportation of final products upto the place of removal. [para 39]

Interpretation of statutes - Cenvat credit of Service tax - Input service definition - Scope of phrase "activity relating to business" widened by words "relating to" - Expression "relating to" widens scope of definition - Use of word "activities" signifies wide import of phrase "activities relating to business" - Qualifying words like "main activities" or "essential activities" not employed in the rule - All and any activity relating to business covered under input service subject to relation between manufacture of final product and the activity - Rule 2(l) of Cenvat Credit Rules, 2004. [paras 26, 27]

Interpretation of statutes - General v. Specific Provision - Principle that specific provision will override general provision not applicable to provision in the nature of concessions or exemptions. [para 41]

3. Bhushan Power & Steel Ltd. vs. CCE (2008) 10 STR 18 (Tri-Kolkata)

Service tax on Goods Transport Agency services payable as a recipient of services can be paid by utilisation of Cenvat credit.

4. CCE vs. Vandana Energy & Steel Pvt. Ltd. (2008) 9 STR 31 (Tri. - Del.)

Credit taken on the basis of the photocopy of the invoices is inadmissible

5. M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana AIT-2007-151-CESTAT

Held that the outward transportation from the factory to the depot is an 'Input Service' and an outward transportation from the factory and from the depot to the premises of the buyer is also

an 'Input Service'. It follows that once it is an input service there cannot be any denial of the credit.

6. Portal India Wireless Solutions P Ltd vs CST, 2012 (27) STR 134 (Kar)

Background: Assessee was a 100% STPI unit engaged in development and export of software.

Issue: Refund was not ,granted on the ground that asseesee was not registered with service tax department.

Held: The High Court also held that registration under Service tax is not a prerequisite for availing credit as per the provisions of law. Hence order passed denying credit on this ground is bad in law and liable to set aside.

7. CCE v Cadila Healthcare Ltd [2013-TIOL-12-HC-AHM-ST]

Background: The taxpayer was a manufacturer of medicines classifiable under chapter 30 of

First Schedule to Central Excise Tariff Act, 1985. The taxpayer availed services of foreign

Agents who were procuring sale orders for the taxpayer.

Issue: The Revenue Authorities were of the view that the foreign agents were acting as commission agents and not involved in sales promotion of the product. Further, according to the definition of 'input services', services of commission agent do not fall under the ambit of 'input services'.

Decision: The HC held that since there was nothing on record to indicate that the commission agents were involved in any sales promotion activities, credit of service tax paid on commission paid to such agents will not be available.

8. Gujarat Ambuja Cements Ltd. 2007 (212) E.L.T. 410 (Tri.-Del.)

Issue: Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

Held: The Delhi Bench of CESTAT in Gujarat Ambuja Cements Ltd held the view that credit should be allowed only upto the place of removal.

Exemption Vs. Cenvat Credit:

1. Khyati Tours & Travels versus Commissioner of C. Ex., Ahmedabad 2011 (24) S.T.R. 456 (Tri. - Ahmd.)

Exemption - Rent-a-cab - Abatement of 60% of Service tax liability claimed by service provider subject to Notification No. 1/2006-S.T. - Benefit denied on the ground of availment of Cenvat credit along with benefit of abatement - Credit so availed reversed by service provider subsequently - Reversal of Cenvat credit amounts to non-availment of credit and accordingly, benefit under notification ibid, not deniable - Section 93 of Finance Act, 1994. [Order-in-Appeal No. 197/2010(STC)/MM/Commr(A), dated 9-8-2010 followed]. [paras 2, 4]

Cenvat credit - Reversal of wrongly availed credit with interest has the effect as if no credit was availed - Rule 6 of Cenvat Credit Rules, 2004. [para 4]

Service Tax Vs. VAT

1. Imagic Creative Pvt. Ltd. vs. CCT (2008) 9 STR 337 (SC)

The Supreme Court held that a composite contract [as distinguished from an indivisible contract] for services and sale and accordingly sales tax would not be payable on the value of entire contract but only on the material component.

2. Idea Mobile Communication. v CCE, Cochin2011-TIOL-71-SC-ST)

Held that in cases where the dominant intention is to pro*vide* services any incidental supply of goods does not change the dominant nature of the transaction as a service transaction.

The Apex Court has taken the view that the SIM card has no intrinsic sale value and is supplied to customers for providing mobile service to the customers; that the sale of SIM card is merely incidental to the service being provided and only facility is identification of the subscribers, their credit and other details, and it would not be assessable to sales tax.

3. Bharat Sanchar Nigam Ltd v. Union of India [(2006) 145 STC 91

There can be a simultaneous levy of two different taxes, namely, sales tax and service tax, on the same transaction, they shall be on different components such as sales tax on the "goods" component and service tax on the "service" component

4. Kerala Classified Hotels And Resorts Association vs UOI 2013-TIOL-533-HC-KERALA-ST

Facts: The petitioners in the above writ petitions are challenging the validity of restaurant service and accommodation service relating to levy of service tax on taxable services referred thereunder.

Issue: Whether service tax can be imposed on the service involved during the sale of a product.

Decision: Held necessarily service forms part of sale of goods and State Government alone will have the legislative competence to enact the law imposing a tax on the service element forming part of sale of goods as well. It is declared that sub Clauses (zzzzv) and (zzzzw) to Clause 105 of Section 65 of the Finance Act 1994 as amended by the Finance Act 2011 is beyond the legislative competence of the Parliament as the sub Clauses are covered by Entry 54 and Entry 62 respectively of List II of the Seventh Schedule. If any payments have been made petitioners are entitled to seek refund of the same.

Exemption:

5. Share Medical Care Vs. Union of India {2007 (209) ELT 321 –SC}

Exemption - Even if an applicant does not claim benefit under a particular notification at initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage - Section 25 of Customs Act, 1962. [para 15]

Exemption - Option to choose - If applicant is entitled to benefit under two different Notifications or under two different heads, he can claim more benefit and it is duty of authorities to grant such benefits if applicant is entitled to such benefit - Section 25 of Customs Act, 1962. [para 16]

6. IOCL Vs. CCE, VADODARA, {2012-TIOL-04-SC-CX}

Refund - Aviation fuel supplied to Air India for foreign bound flights which was exempt from payment of excise duty - Proof - Duty paid mistakenly and refund claim filed later on rejected for non-compliance with requirement of Rules and exemption notification - With respect to claim which fell within the period of limitation which was rejected on the ground of non-compliance with mandatory requirements, in the case of very petitioner, the High Court remanded the proceedings before the Revisional Authority for fresh consideration - To the extent the petitioner's refund claim pertained to the period beyond one year from the relevant date, the same would not be maintainable - To the extent the claim is within the period of limitation, the Revisional Authority to re-examine the issue. [paras 8, 10]

Some Other Case Laws:

7. CCEx. V. Bajaj Auto Finance Ltd., [2008] 10 STR 433 (SC)

Hire purchase finance different from HP Agreement. It is in the nature of extending finance. Not liable to Tax.

8. Commissioner of Service Tax Vs. Lincoln Helios (India) Ltd. 2011 (23) STR 112 (Kar.)

Held that excise duty is levied on the aspect of manufacture and service tax is levied on services. Hence, it would not amount to pay payment of tax twice and assessee would be liable to pay service tax on the value of services.

Indian Institute of Aircraft Engineering Vs UOI 2013-Tiol-430-Hc-Del-ST

Background: The Petitioner was a Aircraft Maintenance Engineering Training School approved by the DGCA for providing Aircraft Maintenance Engineering (AME) training and conducting examination as per the course approved by the DGCA under the Aircraft Act, 1934 (the Act) and the Aircraft Rules, 1937 (the Rules) and the Civil Aviation Requirements (CAR) issued by the DGCA under Rule 133B of the Rules.

Issue: Whether the above said training provided by the petitioner is liable to service tax under commercial training or coaching centre service?

*HeId:*The High Court was of the view that the Act, the Rules and the CAR, having provided for grant of approval to such institutes and having laid down conditions for grant of such approval and having further provided for relaxation of one year in the minimum practical training required for taking the DGCA examination, have recognized the Course Completion Certificate and the qualification offered by such Institutes.

Thus, the certificate/training/qualification offered by approved Institutes, has by the Act, Rules and the CAR been conferred some value in the eyes of law.

"The Instruction holding the petitioner to be assessable to Service Tax is contrary to Section 65(27) and the Notification dated 25th April, 2011. Accordingly the said Instruction and the show cause notices given to the petitioner are quashed".

Appendix 5

Notification No. 25/2012-S.T. – Mega Exemptions

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely :-

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

2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;

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

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

5. Services by a person by way of -

   (a) renting of precincts of a religious place meant for general public; or

   (b) conduct of any religious ceremony;

6. 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;

7. 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 the Drug Controller General of India;

8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

9. Services provided to an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property;

10. Services provided to a recognised sports body by-

(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;

(b) another recognised sports body;

11. Services by way of sponsorship of sporting events organised,-

(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any 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, Paralympic Committee of India or Special Olympics Bharat;

(c) by Central Civil Services Cultural and Sports Board;

(d) as part of national games, by Indian Olympic Association; or

(e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme;

12. 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 65B of the said Act;

13. 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 12AA 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;

14. 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) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright,-

    (a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or

    (b) of cinematograph films for exhibition in a cinema hall or cinema theatre;";;

16. 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;

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

18. 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;

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year;";

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -

    (a) Omitted

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

    (c) defence or military equipments;

    (d) Omitted;

    (e) Omitted;

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

    (g) railway equipments or materials;

    (h) agricultural produce;

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

    (j) chemical fertilizer and oilcakes;

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;

22. 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;

23. 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;

24. Omitted;

25. 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;

26. 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 Ministry 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;

26A. Services of life insurance business provided under following schemes -

(a) Janashree Bima Yojana (JBY); or

(b) Aam Aadmi Bima Yojana (AABY);".

27. 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;

28. 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;

29. Services 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. 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;

31. Services by an organiser to any person in respect of a business exhibition held outside India;

32. Services by way of making telephone calls from -

(a) departmentally run public telephone;

(b) guaranteed public telephone operating only for local calls; or

(c) free telephone at airport and hospital where no bills are being issued;

33. Services by way of slaughtering of animals;

34. Services received from a provider of service located in a non- taxable territory by-

(a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;

(b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

(c) a person located in a non-taxable territory;

35. Services of public libraries by way of lending of books, publications or any other knowledge - enhancing content or material;

36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);

37. Services by way of transfer of a going concern, as a whole or an independent part thereof;

38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;

39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

2. Definitions. - For the purpose of this notification, unless the context otherwise requires, –

(a) "Advocate" has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);

(b) "appropriate duty" means duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt;

(c) "arbitral tribunal" has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);

(d) "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;

(e) "authorised person" means any person who is appointed as such either by a stock broker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stock broker or member of a commodity exchange;

(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

(g) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934(2 of 1934);

(h) "brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person;

(i) "business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;

(j) "clinical establishment" 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;

(k) "charitable activities" means activities relating to -

(i) public health by way of -

(a) care or counseling 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) preservation of environment including watershed, forests and wildlife;

(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;~~

(l) "commodity exchange" means an association as defined in section 2(j) and recognized under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);

(m) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(n) "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit;

(o) "distributor or selling agent" has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs, published in the Gazette of India,

Extraordinary, Part-II, Section 3, Sub-section (i), *vide* number G.S.R. 278(E), dated the 1st April, 2010 and shall include distributor or selling agent authorised by the lottery-organising State;

(p) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

(q) "general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

(r) "goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(s) "governmental authority" 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;

(t) "health care services" means any 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;

(u) "incubatee" means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised 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;

(v) "insurance company" means a company carrying on life insurance business or general insurance business;

(w) "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;

(x) "life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

(y) "original works" means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

(z) "principal manufacturer" means any person who gets goods manufactured or processed on his account from another person;

(za) "recognized sports body" means - (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised by the International Olympic Association or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;

(zb) "religious place" means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

(zc) "residential complex" means any complex comprising of a building or buildings, having more than one single residential unit;

(zd) "rural area" means the area comprised in a village as defined in land revenue records, excluding-

the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or

any area that may be notified as an urban area by the Central Government or a State Government;

(ze) "single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

(zf) "specified international organization" means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

(zg) "state transport undertaking" has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(zh) ”sub-broker” has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992;

(zi) “trade union” has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).

3. This notification shall come into force on the 1st day of July, 2012.

[Notification No. 25/2012-S.T., dated 20-6-2012]

Appendix 6

Notification No. 26/2012-S.T. – Abatement Notification

Exemption from Service tax in relation to transport of goods and passengers tour operators, financial leasing, hire purchase, renting of hotels, inns, guest houses, clubs campsites or other places, chit funds, renting of cabs, construction of complex/building for sale — Notification No. 13/2012-S.T. superseded

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), and in supersession of notification number 13/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 211(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (2) of the Table below, from so much of the service tax leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely :

TABLE

Sl.No.	Description of taxable service	Percentage	Conditions
(1)	(2)	(3)	(4)
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,	70	(i) CENVAT credit on any goods classifiable under Chapters 1 to 22 of

Sl.No.	Description of taxable service	Percentage	Conditions
	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		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 residential or lodging purposes.	60	Same as above.
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

Sl.No.	Description of taxable service	Percentage	Conditions
			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 specified at (i) and (ii) above.	40	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the

Sl.No.	Description of taxable service	Percentage	Conditions
			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) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004;
	(a) for a residential unit satisfying both the following conditions, namely:–	25	(ii) The value of land is included in the amount charged from the service receiver.
	(i) the carpet area of the unit is less than 2000 square feet; and (ii) the amount charged for the unit is less than rupees one crore; (b) for other than the (a) above.	30	

Explanation.

A. For the purposes of exemption at Serial number 1 -

(i) The amount charged shall be an amount, forming or representing as interest, i.e. the difference between the installments paid towards repayment of the lease amount and the principal amount contained in such installments;

(ii) the exemption shall not apply to an amount, other than an amount forming or representing as interest, charged by the service provider such as lease management fee, processing fee, documentation charges and administrative fee, which shall be added to the amount calculated in terms of (i) above.

B. For the purposes of exemption at Serial number 4 -

The amount charged shall be 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) and whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services supplied to the service provider, 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.

C. For the purposes of exemption at Serial number 12 -

The amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services supplied to the service provider, 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.

2. For the purposes of this notification, unless the context otherwise requires,-

a. "chit" means a transaction whether called chit, chit fund, chitty, kuri, or by whatever name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to a prize amount,

b. "package tour" means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour,

c. "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.

3. This notification shall come into force on the 1st day of July, 2012.

[Notification No. 26/2012-S.T., dated 20-6-2012]

Appendix 7

Notification No. 30/2012-S.T. – Reverse Charge

Notification No. 30/2012-S.T., dated 20-6-2012 as amended :

Services for which tax is payable or partially payable by persons receiving the service — Service tax payable by Reverse Charge System in relation to insurance business, GTA, sponsorship, Arbitral Tribunal, legal services by Advocates, support services provided by Govt. or local authorities (except specified services), renting of motor vehicles on abated value, renting of motor vehicles on unabated value (partially also payable by service provider), manpower supply (partially also payable by service provider), work contract (partially also payable by service provider), service provide from non-taxable territory but received in taxable territory (partially also payable by service provider) — Notification Nos. 15/2012-S.T. & 36/2004-S.T. superseded

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R 849(E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely :—

I. The taxable services,—

(A)(i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or

(f) any partnership firm whether registered or not under any law including association of persons;

(iii) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;

(iv) provided or agreed to be provided by,-

(A) an arbitral tribunal, or

(B) an individual advocate or a firm of advocates by way of legal services, or

(C) Government or local authority by way of support services excluding,-

(1) renting of immovable property, and

(2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994,

to any business entity located in the taxable territory;

(iva) provided or agreed to be provided by a director of a company to the said company

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or security services or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely :

TABLE

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.	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2.	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3.	in respect of services provided or agreed to be provided by way of sponsorship	Nil	100%
4.	in respect of services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5.	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
5A	in respect of services provided or agreed to be provided by a director of a company to the said company	Nil	100%
6.	in respect of services provided or agreed to be provided by Government or local authority by way of support services excluding,- (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994	Nil	100%

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
7.	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	Nil	100%
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose or security services	25%	75 %
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%
10.	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

Explanation-I. The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012.

[Notification No. 30/2012-S.T., dated 20-6-2012]

Appendix 8

Amnesty Scheme — Service Tax Voluntary Compliance Encouragement Rules, 2013

In exercise of the powers conferred by sub-sections (1) and (2) of section 114 of the Finance Act, 2013 (17 of 2013), the Central Government hereby makes the following rules regarding the form and manner of declaration, form and manner of acknowledgement of declaration, manner of payment of tax dues and form and manner of issuing acknowledgement of discharge of tax dues under the Service Tax Voluntary Compliance Encouragement Scheme, 2013, namely :-

1. Short title and commencement. - (1) These rules may be called the Service Tax Voluntary Compliance Encouragement Rules, 2013.

(2) They shall come into force on the date of its publication in the Gazette of India.

2. Definitions. - (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Finance Act, 2013;

(b) "Form" means the Forms annexed to these rules.

(c) "Scheme" means the Service Tax Voluntary Compliance Encouragement Scheme, 2013 as specified in the Act;

(2) Words and expressions used but not defined in these rules but defined in the Scheme shall have the meanings respectively assigned to them in the Scheme.

3. Registration. - Any person, who wishes to make a declaration under the Scheme, shall, if not already registered, take registration under rule 4 of the Service Tax Rules, 1994.

4. Form of declaration. - The declaration under sub-section (1) of section 107 of the Act, in respect of tax dues under the Scheme shall be made in Form VCES -1.

5. Form of acknowledgment of declaration. - The designated authority on receipt of declaration shall issue an acknowledgement thereof, in Form VCES -2, within a period of seven working days from the date of receipt of the declaration.

6. Payment of tax dues. - (1) The tax dues payable under the Scheme along with interest, if any, under section 107 of the Act shall be paid to the credit of the Central

Government in the manner prescribed for the payment of service tax under the Service Tax Rules, 1994.

(2) The CENVAT credit shall not be utilised for payment of tax dues under the Scheme.

7. Form of acknowledgement of discharge. - (1) The designated authority shall issue an acknowledgement of discharge under sub-section (7) of section 107 of the Act, in Form VCES-3.

(2) The acknowledgement of discharge shall be issued within a period of seven working days from the date of furnishing of details of payment of tax dues in full along with interest, if any, by the declarant.

FORM VCES-1

[In duplicate]

Declaration under sub section (1) of section 107 of the Act.

[See rule 4]

(Please read the instructions carefully before filling the form)

1.	**Name of the declarant**	
2	**Address of the declarant**	
3	**Telephone No.**	
4	**E-mail id**	
5	**Service Tax Code (STC No.)**	
6	**Details of tax dues***	
A	Service tax	₹
B	Education cess	₹
C	Secondary & Higher Education Cess	₹
D	Amount under section 73A of the Finance Act,1994	₹
E	Total Tax dues* [A+B+C+D]	₹

*Furnish a calculation sheet separately [for the purposes of calculation of tax dues, the manner of calculation as prescribed in S. No. 3F (I), or as the case may be, the Part 'B' of Form ST-3, as existed during relevant period may be used and calculation of tax dues may be furnished tax return period wise, and service wise if the tax dues relates to more than one service.]

VERIFICATION

I.....(name in block letters) son/daughter of Shri..... solemnly declare that I have read and understood the Service Tax Voluntary Compliance Encouragement Scheme as contained in Chapter VI of the Finance Act 2013, and to the best of my knowledge and belief -

(a) the information given in this declaration and the enclosures accompanying it are correct and complete and the amount of tax dues and other particulars shown therein are truly stated;

(b) the tax dues declared above do not attract the provisions of sub-section (1), including the provisos thereto, of section 106 of the Act;

(c) no inquiry, investigation or audit is pending against the declarant as on the 1st day of March 2013 as envisaged in sub-section (2) of section 106 of the Act;

I further declare that I am authorised to make this declaration and verify it on behalf of the declarant in the capacity as .....

Enclosures:

S. No.	Details of enclosure/statement annexed
1	Calculation sheet in respect of tax dues (refer S. No. 6 above and the instructions)
2	Any other documents (please specify)

Signature of the declarant/authorised person with stamp

Place: **Date:**

Declaration No.									**Date**							

(To be assigned by the department)

Instructions:

1. The Scheme has been prescribed in the Chapter VI of the Act. The provisions contained therein may please be read carefully (refer www.cbec.gov.in).

2. This Form shall be submitted to the Central Excise Officer notified as designated authority under section 105(c) of the Act.

3. The tax dues may be computed separately for each service if the tax dues relates to more than one service during the period of declaration.

4. For calculation of tax dues, the manner as prescribed at S. No. 3F (I), or as the case may be the Part 'B' of the Form ST-3, as existed during the relevant period, may be used and calculation of tax dues may be furnished tax return period wise

5. Calculation sheet showing the tax dues calculation may please be enclosed with this declaration.

6. Obtain an acknowledgment from the designated authority in form VCES -2.

7. The declarant may approach the designated authority for any clarification.

FORM VCES-2

[Acknowledgment of declaration issued under sub-section (2) of section 107 of the Act]. [See rule 5]

No.

Receipt of a declaration filed under sub-section (1) of section 107 of the Act, as per the details below, is acknowledged.

1	**Declaration No.**		**Date**
2.	**Name of the declarant**		
3	**Address of the declarant**		
4	STC No.		
5	Tax dues declared	₹	
6	Schedule for payment of tax dues		
A	Minimum amount to be paid on or before the 31st Dec, 2013 (50% of the tax dues)	₹	
B	Remaining tax dues to be paid on or before the 30th June, 2014 [amount at S.No. 5(-)Amount at S. No. 6A]	₹	
E	Total Tax dueAny tax dues remaining unpaid as on 1st day of July,2014 shall be paid before the 31st December,2014 along with interest, as prescribed under section 75 or as the case may b, section 73B of the Finance Act, 1994 for the period of delay starting from the 1st day of July,2014.		

Signature, name and seal of designated authority

Place: **Date:**

Instructions:

1. This acknowledgment has been issued on the basis of declaration furnished by the declarant and it does not certify the correctness of the declaration made. This declaration does not certify payment of any tax dues.

2. Certificate of discharge in form VCES -3 shall be issued only upon full payment of tax dues along with interest if any, as per the details at S. No. 6 above.

3. If any amount declared as tax dues under the Scheme remain unpaid as on 1.1.2015, the same shall be recoverable under section 87 of the Finance Act, 1994.

4. For any clarification, the declarant may get in touch with the designated authority

FORM VCES-3

ACKNOWLEDGEMENT OF DISCHARGE

[Issued under sub-section (7) of section 107 of the Act]
[See rule 7]

No.

This acknowledgment of discharge has been issued under sub-section (7) of section 107 of the Act, to ACKNOWLEDGE that the tax dues declared under sub-section (1) of section 107 of the Act have been paid, in respect of declaration so made as per the following details.

1	Declaration No.	Date
2.	Name of the declarant	
3	Address of the declarant	
4	STC No.	
5	Tax dues declared under the Scheme	₹
6	Payment of tax dues	
A	Tax dues paid on or before 31.12.2013	₹
B	Tax dues paid after 31.12.2013 but on or before 30.6.2014	₹
C	Tax dues paid after 30.6.2014 but on or before 31.12.2014	₹
D	Interest paid under section 107 (4) on amount mentioned at '6C'	₹
E	Total amount paid (A+B+C+D)	₹
7	Details of challan(s)	

Challan No(s)(CIN)	Amount

Signature, name and seal of designated authority

Place: **Date:**

Appendix 9

Service Tax Voluntary Compliance Encouragement Scheme — Clarifications

Circular No. 169/4/2013-S.T., dated 13-5-2013

F.No. B1/19/2013-TRU

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : The Service Tax Voluntary Compliance Encouragement Scheme- clarifications regarding.

The Service Tax Voluntary Compliance Encouragement Scheme (VCES) has come into effect upon enactment of the Finance Bill 2013 on the 10th May, 2013. The Service Tax Voluntary Compliance Encouragement Rules, 2013 has been issued to bring into effect the Scheme. Some references have been received seeking clarification as regards the scope and applicability of the Scheme.

2. The issues have been examined and clarifications thereto are as follows :

S. No.	Issues	Clarification
1	Whether a person who has not obtained service tax registration so far can make a declaration under VCES?	Any person who has tax dues to declare can make a declaration in terms of the provisions of VCES. If such person does not already have a service tax registration he will be required to take registration before making such declaration.
2	Whether a declarant shall get immunity from payment of late fee/penalty for having not taken registration earlier or not filed the return or for delay in filing of return.	Yes. 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.

S. No.	Issues	Clarification
3	Whether an assessee to whom show cause notice or order of determination has been issued can file declaration in respect of tax dues which are not covered by such SCN or order of determination?	In terms of section 106(1) of the Finance Act, 2013 and second proviso thereto, the tax dues in respect of which any show cause notice or order of determination under section 72, section 73 or section 73A has been issued or which pertains to the same issue for the subsequent period are excluded from the ambit of the Scheme. Any other tax dues could be declared under the Scheme subject to the other provisions of the Scheme.
4	What is the scope of section 106(2)(a)(iii)? Whether a communication from department seeking general information from the declarant would lead to invoking of section 106(2)(a)(iii) for rejection of declaration under the said section?	Section 106(2)(a)(iii) of the Finance Act, 2013 provides for rejection of declaration if such declaration is made by a person against whom an inquiry or investigation in respect of service tax not levied or not paid or short-levied or short paid, has been initiated by way of requiring production of accounts, documents or other evidence under the chapter or the rules made thereunder, and such inquiry or investigation is pending as on the 1st day of March, 2013. The relevant provisions, beside section 14 of the Central Excise Act as made applicable to service tax vide section 83 of the Finance Act,1994, under which accounts, documents or other evidences can be requisitioned by the Central Excise Officer for the purposes of inquiry or investigation, are as follows,- (i) Section 72 of the Act envisages requisition of documents and evidences by the Central Excise Officer if any person liable to pay service tax fails to furnish the return or having made a return fails to assess the tax in accordance with the provision of the Chapter or rules made thereunder.

S. No.	Issues	Clarification
		(ii) Rule 5A of the Service Tax Rules, 1994 prescribes for requisition of specified documents by an officer authorised by the Commissioner for the purposes specified therein. The provision of section 106(2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidences are requisitioned by the authorised officer from the declarant under the authority of any of the above stated statutory provisions and the inquiry so initiated against the declarant is pending as on the 1st day of March, 2013. No other communication from the department would attract the provisions of section 106(2)(a)(iii) and thus would not lead to rejection of the declaration.

3. Trade Notice/Public Notice may be issued to the field formations and taxpayers. Please acknowledge receipt of this Circular. Hindi version follows.

Circular No : 170/5 /2013-ST, Dated: August 8, 2013

Subject: The Service Tax Voluntary Compliance Encouragement Scheme - clarifications regarding.

The Service Tax Voluntary Compliance Encouragement Scheme (VCES) has come into effect from 10.5.2013. Some of the issues raised with reference to the Scheme have been clarified by the Board vide circular No. 169/4/2013-ST, dated 13.5.2013. Subsequently, references have been received by the Board seeking further clarifications as regards the scope and applicability of the Scheme.

2. The issues have been examined and clarifications thereto are as follows:

S No.	Issues	Clarification
1	Whether the communications, wherein department has sought information of roving nature from potential taxpayer regarding their business activities without seeking any documents from such person or calling for his presence, while quoting the authority of section 14 of the Central Excise Act, 1944, would attract the provision of section 106 (2) (a)?	Attention is invited to clarification issued at S. No. 4 of the circular No. 169/4/2013-ST, dated 13.5.2013, as regards the scope of section 106 (2) (a) of the Finance Act, 2013, wherein it has been clarified that the provision of section 106 (2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidence are requisitioned by the authorized officer from the declarant under the authority of a statutory provision. A communication of the nature as mentioned in the previous column would not attract the provision of section 106 (2)(a) even though the authority of section 14 of the Central Excise Act may have been quoted therein.
2	An assessee has two units at two different locations, say Mumbai and Ahmedabad. Both are separately registered. The Mumbai unit has received a Show Cause Notice for non-payment of tax on a revenue stream but	Two separate service tax registrations are two distinct assessees for the purposes of service tax levy. Therefore, eligibility for availing of the Scheme is to be determined

S No.	Issues	Clarification
	the Ahmedabad unit has not. Whether the Ahmedabad unit is eligible for VCES?	accordingly. The unit that has not been issued a show cause notice shall be eligible to make a declaration under the Scheme.
3	Whether a declaration can be made under the Scheme in respect of CENVAT credit wrongly utilized for payment of service tax?	Any service tax that has been paid utilizing the irregular credit, amounts to non-payment of service tax. Therefore such service tax amount is covered under the definition of "tax dues".
4	Whether a party, against whom an inquiry, investigation or audit has been initiated after 1.3.2013 (the cutoff date) can make a declaration under the Scheme?	Yes. There is no bar from filing of declaration in such cases.
5	There was a default and a Show Cause Notice was issued for the period prior to the period covered by the Scheme, i.e. before Oct 2007. Whether declaration can be filed for default on the same issue for the subsequent period?	In the context of the Scheme, the relevant period is from Oct 2007 to Dec 2012. Therefore, the 2 nd proviso to section 106 (1) shall be attracted only in such cases where a show cause notice or order of determination has been issued for the period from Oct 2007 to Dec 2012. Accordingly, issuance of a show cause notice or order of determination for any period prior to Oct 2007, on an issue, would not make a person ineligible to make a declaration under the Scheme on the same issue for the period covered by the Scheme. Therefore, declaration can be made under VCES.
6	In a case where the assessee has been audited and an audit para has been issued, whether the assessee can declare liability on an issue which is not a part of the audit para , under the VCES 2013?	Yes, declarant can declare the "tax dues" concerning an issue which is not a part of the audit para .

S No.	Issues	Clarification
7	Whether a person, who has paid service tax for a particular period but failed to file return, can take the benefit of VCES Scheme so as to avoid payment of penalty for non- filing of return?	Under VCES a declaration can be made only in respect of "tax dues". A case where no tax is pending, but return has not been filed, does not come under the ambit of the Scheme. However, rule 7C of the Service Tax Rules provides for waiver of penalty in deserving cases where return has not been filed and, in such cases, the assessee may seek relief under rule 7C.
8	A person has made part payment of his 'tax dues' on any issue before the scheme was notified and makes the declaration under VCES for the remaining part of the tax dues. Will he be entitled to the benefit of non-payment of interest/penalty on the tax dues paid by him outside the VCES, i.e., (amount paid prior to VCES)?	No. The immunity from interest and penalty is only for "tax dues" declared under VCES. If any "tax dues" have been paid prior to the enactment of the scheme, any liability of interest or penalty thereon shall be adjudicated as per the provisions of Chapter V of the Finance Act, 1994 and paid accordingly.
9	Whether an assessee , who, during a part of the period covered by the Scheme, is in dispute on an issue with the department under an erstwhile provision of law, can declare his liability under the amended provisions, while continuing to litigate the outstanding liability under the erstwhile provision on the issue?	In terms of the second proviso to section 106 (1), where a notice or order of determination has been issued to a person in respect of any issue, no declaration shall be made by such person in respect of "tax dues" on the same issue for subsequent period. Therefore, if an issue is being litigated for a part of the period covered by the Scheme, i.e., Oct, 2007 to Dec 2012, no declaration can be filed under VCES in terms of the said proviso on the same issue for the subsequent period.

S No.	Issues	Clarification
10	Whether upon filing a declaration a declarant realizes that the declaration filed by him was incorrect by mistake? Can he file an amended declaration?	The declarant is expected to declare his tax dues correctly. In case the mistake is discovered suo-moto by the declarant himself, he may approach the designated authority, who, after taking into account the overall facts of the case may allow amendments to be made in the declaration, provided that the amended declaration is furnished by declarant before the cut off date for filing of declaration, i.e., 31.12.2013.
11	What is the consequence if the designated authority does not issue an acknowledgement within seven working days of filing of declaration? Whether the declarant can start making payment of the tax dues even if acknowledgement is not issued?	Department would ensure that the acknowledgement is issued in seven working days from the date of filing of the declaration. It may however be noted that payment of tax dues under the Scheme is not linked to the issuance of an acknowledgement. The declarant can pay tax dues even before the acknowledgement is issued by the department.
12	Whether declarant will be given an opportunity to be heard and explain his cases before the rejection of a declaration under section 106(2) by the designated authority?	Yes. In terms of section 106 (2) of the Finance Act, 2013, the designated authority shall, by an order, and for reasons to be recorded in writing, reject a declaration if any inquiry/investigation or audit was pending against the declarant as on the cutoff date, i.e., 1.3.2013. An order under this section shall be passed following the principles of natural justice.

S No.	Issues	Clarification
		To allay any apprehension of undue delays and uncertainty, it is clarified that the designated authority, if he has reasons to believe that the declaration is covered by section 106 (2), shall give a notice of intention to reject the declaration within 30 days of the date of filing of the declaration stating the reasons for the intention to reject the declaration. For declarations already filed, the said period of 30 days would apply from the date of this circular. The declarant shall be given an opportunity to be heard before any order is passed by the designated authority.
13	What is the appeal mechanism against the order of the designated authority whereby he rejects the declaration under section 106 (2) of the Finance Act, 2013?	The Scheme does not have a statutory provision for filing of appeal against the order for rejection of declaration under section 106 (2) by the designated authority.
14	A declarant pays a certain amount under the Scheme and subsequently his declaration is rejected. Would the amount so paid by him be adjusted against his liability that may be determined by the department?	The amount so paid can be adjusted against the liability that is determined by the department.
15	Section 111 prescribes that where the Commissioner of Central Excise has reasons to believe that the declaration made by the declarant was 'substantially false', he may serve a notice on the declarant in respect of such declaration. However, what constitutes a 'substantially false' declaration has not been specified.	The Commissioner would, in the overall facts of the case, taking into account the reasons he has to believe, take a judicious view as to whether a declaration is 'substantially false'. It is not feasible to define the term "substantially false" in precise terms. The proceeding under section 111 would be initiated in accordance with the principles of natural justice.

S No.	Issues	Clarification
		To illustrate, a declarant has declared his "tax dues" as Rs 25 lakh. However, Commissioner has specific information that declaration has been made only for part liability, and the actual "tax dues" are Rs 50 lakh. This declaration would fall in the category of "substantially false". This example is only illustrative.
16	What is the consequence if a declarant fails to pay atleast 50% of declared amount of tax dues by the 31 st Dec 2013?	One of the conditions of the Scheme [section 107 (3)] is that the declarant shall pay atleast an amount equal to 50% of the declared tax dues under the Scheme, on or before the 31.12.2013. Therefore, if the declarant fails to pay atleast 50% of the declared tax dues by 31 st Dec, 2013, he would not be eligible to avail of the benefit of the scheme.
17	Whether the CENVAT credit is admissible on the inputs/input services used for provision of output service in respect of which declaration has been made under VCES for payment of any tax liability outside the VCES?	The VCES Rules 2013 prescribe that CENVAT credit cannot be utilized for payment of "tax dues" under the Scheme. Accordingly the "tax dues" under the Scheme shall be paid in cash. The admissibility of CENVAT credit on any inputs and input services used for provision of output service in respect of which declaration has been made shall continue to be governed by the provisions of the Cenvat Credit Rules, 2004.

S No.	Issues	Clarification
18	(a) Whether the tax dues amount paid under VCES would be eligible as CENVAT credit to the recipient of service under a supplementary invoice?	Rule 6(2) of the Service Tax Voluntary Compliance Encouragement Rules, 2013, prescribes that CENVAT credit cannot be utilized for payment of "tax dues" under the Scheme. Except this condition, all issues relating to admissibility of CENVAT credit are to be determined in terms of the provisions of the Cenvat Credit Rules.
	(b) Whether cenvat credit would be admissible to the person who pays tax dues under VCES as service recipient under reverse charge mechanism?	As regards admissibility of CENVAT credit in situations covered under part (a) and (b), attention is invited to rule 9(1)(bb) and 9(1)(e) respectively of the Cenvat Credit Rules.
19	In terms of section 106 (2)(b), if a declaration made by a person against whom an audithas been initiated and where such audit is pending, then the designated authority shall by an order and for reasons to be recorded in writing, reject such declaration. As the audit process may involve several stages, it may be indicated as to what event would constitute,-	Initiation of audit: For the purposes of VCES, the date of the visit of auditors to the unit of the taxpayer would be taken as the date of initiation of audit. A register is maintained of all visits for audit purposes.
	(i) initiation of audit; and	Culmination of audit: The audit process may culminate in any of the following manner.-
	(ii) culmination of audit.	(i) Closure of audit file if no discrepancy is found in audit; (ii) Closure of audit para by the Monitoring Committee Meeting (MCM); (iii) Approval of audit para by MCM and payment of amount involved therein by the party in terms of the provisions of the Finance Act, 1994;

S No.	Issues	Clarification
		(iv) Approval of audit para by MCM, and issuance of SCN, if party does not agree to the para so raised. The audit culminates at a point when the audit paras raised are settled in any manner as stated above. The pendency of audit as on 1.3.2013 means an audit that has been initiated before 1.3.2013 but has not culminated as on 1.3.2013.

3. Trade Notice/Public Notice may be issued to the field formations and tax payers.

Please acknowledge receipt of this Circular.

Hindi version follows.

F. No. B1/19/2013-TRU (Pt)

(S Jayaprahasam)

Technical Officer, TRU