

# Service Tax - Negative List Regime CA Pritam Mahure



## CA Pritam Mahure

This book is a compilation of key Service Tax Legal provisions (as applicable from 1 July 2012). Relevant amendments have been shown in red colour/ track change. Also, Central Excise provisions which are applicable (vide sec. 83 of FA' 1994) to ST legislation are highlighted in green colour. For feedback/queries readers may write to capritam@gmail.com

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## **ABOUT THE BOOK**

### **FOREWORDS**

The challenge of dissemination of a tax law in a cogent and lucid manner is nearly as huge as its making. Mr. Pritam Mahure in this book has attempted to meet the challenge with laurels coming very close to what could even be termed as a “work of art”.

Indirect tax reforms in recent years have been largely guided keeping in view the eventual goal of GST. The changes over the last couple of years in the areas of service tax are definitely precursors in that direction. A careful understanding and applicability of the new provisions will go a great length in helping our smooth transition towards GST.

Taxation of services based on Negative List, together with many other significant changes, in 2012 has refreshed the challenge of managing change once again. Despite an elaborate effort to explain the new provisions by way of “Education Guide” released by the Government, it still required considerable effort to carry out the task in the light of experience gained from its early applicability.

Service tax law by itself is not comprehensive and relies considerably on the provisions from other enactments. To put it in a user-friendly manner for the tax-payers and other practitioners is an enormous challenge.

I have noticed that Mr Pritam Mahure has taken immense pains to provide comprehensive coverage to the subject. It has been a pleasure for me to go through the subject once again, somewhat like watching a suspense movie all over again, knowing the ultimate truth, yet enjoying the nuances from time-to time.

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- Also, I am thankful to **CA Shankar Rochlani** for his efforts in updating this edition

## About the author



- CA Pritam Mahure works in the field of Indirect Taxes (Service Tax, Excise and Goods and Service Tax) since more than a decade. Pritam has also worked with leading multinational consulting organisations.
- Pritam has authored books on "Service Tax" and "GST" for Bharat Publication and CII.
- Pritam has authored more than 100 articles in The Hindu, Business Standard, Business Line, Economic Times, The Asian Age, Deccan Herald, Sakal, Taxmann, Taxindiaonline etc.
- Pritam has addressed more than 75 conferences/ seminars and 10,000 professionals on GST and Service Tax for CII, ASSOCHAM, NASSCOM, MCCIA, DCCIA, ICAI, DGST and Government officers across India.
- Pritam is conducting GST Awareness Campaign for CII IIL by addressing seminars on GST all across India. Pritam is also assisting State Governments with respect to proposed GST.
- For suggestions/ feedback/ queries readers may revert at [capritam@gmail.com](mailto:capritam@gmail.com)

## 1. NEGATIVE LIST – IN A NUTSHELL

### A. In a nutshell



### B. Negative vis-à-vis Positive list regime – A Comparative Analysis

Current provisions (Negative List)	Coverage	Earlier provisions (Positive List)
65B	Definitions	65
66B	Charging Section	66 and 66A
66C	Determination of Place of Provision of services	Export and Import Rules
66D	Negative List	Service specific exclusions/ exemptions
66E	Declared services	65 (105)
66F	Interpretation Rules and Bundled services	65A (covers classification only)
67 and Valuation Rules (Amended)	Valuation	67 and Valuation Rules
67A and POTR	Date of determination tax rate, value and exchange Rate	POTR
25/2012-ST	One mega notification	Various notifications

### C. Rules deleted/ substituted

SR	Rules	Particulars	Rationale for deletion of rules
1	Taxation of Services (Provided from Outside India & Received in India) Rules, 2006	Deleted	Introduction of 'Place of Provision of Services Rules, 2012'
2	Export of Services Rules, 2005	Deleted	Introduction of 'Place of Provision of Services Rules, 2012'
3	Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007	Deleted	Insertion of Rule 2A in the Service Tax Valuation Rules, 2006

## D. Key provisions and effective date

Provisions	Particulars
Negative List regime	Applicable w.e.f. 1 July 2012
Applicable rate of Service Tax	14% (From 1 <sup>st</sup> June 2015) –+ SBC 0.50% (From 15 <sup>th</sup> Nov. 2015) + 0.50% KKC (From 1 <sup>st</sup> June 2016)

## E. Abatement (Refer Not. No. 26/2012 and Valuation Rules)

SR	Service	Taxable
1	Goods Transport Agency (GTA) other than used household goods <sup>1</sup> (any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage)  Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.	30%
1A	Services of goods transport agency in relation to transportation of used household goods	40%
2	Transport of goods by rail (other than service specified at Sl. No. 2A below) <sup>2</sup>	30%
2A	Transport of goods in containers by rail by any person other than Indian Railways <sup>3</sup>	40%
3	Services provided by a foreman of chit fund in relation to chit <sup>4</sup>	70%
4	Transport of passengers by rail	30%
5	Transport of goods in a vessel	50% <sup>5</sup>
6	Transport of passengers by air (if travelling in economy class)	40%
7	Transport of passengers by air (for classes other than economy class)	60%
8	Supply of food or any other article of human consumption or any drink, in a restaurant / other premises	40%/60%
9	Supply of food in convention centre, pandal, shamiana etc	70%
10	Accommodation in hotels, inns etc	60%

<sup>1</sup> Inserted vide Notification No. 8/2016-ST w.e.f. 01.04.2016

<sup>2</sup> Substituted vide Notification No. 8/2016-ST w.e.f. 01.04.2016

<sup>3</sup> Inserted vide Notification No. 8/2016-ST w.e.f. 01.04.2016

<sup>4</sup> Inserted vide Notification No. 8/2016-ST w.e.f. 01.04.2016.

<sup>5</sup> 40% wef 1 October 2014 vide Not. No. 8/2014-ST

11	Renting of [any vehicle designed to carry passengers] <sup>6</sup>	40%
12	Services by a tour operator in relation to,- (i) a tour, only for the purpose of arranging or booking accommodation for any person	10
13	(ii) tours other than (i) above	30%
14	Services other than 11 and 12 provided in relation to tour	40%
15	Financial leasing services including hire purchase	10%
17	<sup>7</sup> 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; <b>and</b>  (ii) the amount charged for the unit is less than rupees one crore;  (b) for other than the (a) above	8  30%
18	Works contracts entered into for execution of <b>original works</b>	40%
19	Works contracts entered into for maintenance or repair or reconditioning or restoration or servicing of any <b>goods</b>	70%
20	For <b>other works contracts</b> , not covered under sr. no. 16 and 17 , including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property,	70%
21	Transport of passengers, with or without accompanied belongings, by a. a contract carriage other than motorcab b. a radio taxi c. a stage carriage <sup>9</sup>	40%

#### **F. Reverse Charge Mechanism (Refer Not. No. 30/2012-ST)**

SR	Service	Service recipient	% of ST payable	
			Provider	Recipient

<sup>6</sup> Substituted as 'motorcab' wef 1 October 2014 vide Not. No. 8/2014-ST

<sup>7</sup> Not. No. 9/2013-ST dated 8 May 2013

<sup>8</sup> [Vide Notification No. 8/2016-ST w.e.f. 01.04.2016](#)

<sup>9</sup> [Inserted from 1<sup>st</sup> June 2016 vide Not. No. 8/2016-ST](#)

1	Provided by person who is located in non-taxable territory and received by any person located in taxable territory	Any person <sup>10</sup>	Nil	100%
2	Works contract services by individual, HUF, firm or AOP	Body corporate	50%	50%
3	Manpower supply for any purposes or security services by individual, HUF, firm or AOP	Body corporate		100%
4	Renting of vehicle to any person who is not engaged in the similar line of business to carry passenger by individual, HUF, firm or AOP - With abatement - Without abatement	Body corporate	Nil 50%	100% 50 <sup>11</sup> %
5	Any service <sup>12</sup> by Government and Local Authority (excluding renting and 66D (a) (i) to (iii))	Business entity	Nil	100%
6	Provided or agreed to be provided by a director of a company to the said company (w.e.f. 7 August 2012 vide Not. 45/2012)	Body Corporate <sup>13</sup>	Nil	100%
7	A firm of advocates or an individual advocate other than senior advocate, by way of legal services	Business entity <sup>14</sup>	Nil	100%
8	Arbitral Tribunal	Business entity <sup>15</sup>	Nil	100%
9	Sponsorship	Body corporate or PF	Nil	100%
10	GTA	Company, P. Firm, Factory, Society, excise registered assessee	Nil	100%
11	Insurance agent to insurance companies	Insurance business	Nil	100%
12	In relation to service provided or agreed to be provided by a recovery agent <sup>16</sup>	Banking company or a financial institution or a non-banking financial company	Nil	100%
13	Mutual fund Agent <sup>17</sup>	AMC	NIL	100

<sup>10</sup> Exemption provided to certain persons vide Sr. No. 34 of Not. No. 25/2012-ST

<sup>11</sup> Change effective from 1 October 2014 vide Not. No. 10/2014-ST

<sup>12</sup> Deleted by Finance Act, 2015 w.e.f. 01.04.2016

<sup>13</sup> Substituted for 'company' from 11 July 2014 vide Not. No. 9/20141-ST

<sup>14</sup> Exemption provided to certain persons vide Sr. No. 6 of Not. No. 25/2012-ST

<sup>15</sup> Exemption provided to certain persons vide Sr. No. 6 of Not. No. 25/2012-ST

<sup>16</sup> Inserted from 11 July 2014 vide Not. No. 9/20141-ST

<sup>17</sup> Deleted from 1 April 2016 and covered under forward charge vide Not. 18/2016-ST



## **G. Brief Note on Negative List regime<sup>18</sup>**

### ***What is the significance of the changes due to the new system of taxation?***

*Budget 2012 proposes to usher a paradigm shift in the manner services will be taxed in future. The transition involves shift from taxation of 119 service-specific descriptions to a new regime whereby all services will be taxed unless they are covered by any of the entries in the negative list or are otherwise exempted. The new system is a marked shift by way of comprehensive taxation of the entire service sector without getting into complex issues of classification of services.*

### ***What is the broad the scheme of new taxation?***

*In the new system, service tax will be levied on all services provided in a taxable territory other than the services specified in the negative list. The key features of this system are as follows:*

- ▶ *At the outset 'service' has been defined in clause (44) of section 65B of the Act.*
- ▶ *Section 66B specifies the charge of service tax which is essentially that service tax shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list.*
- ▶ *The negative list of services is contained in section 66D of the Act.*
- ▶ *Since provision of service in the taxable territory is an important ingredient of taxability, section 66C empowers the Central Government to make rules for determination of place of provision of service. Under these provisions the Place of Provision of Services Rules, 2012 have been made for which a separate and detailed guidance paper (GPB) has been issued.*
- ▶ *To remove some ambiguities certain activities have been specifically defined by description as services and are referred as Declared Services (listed in section 66E).*
- ▶ *In addition to the services specified in the negative list, certain exemptions have been given. Most of the exemptions are proposed to be consolidated in a single mega exemption for ease of reference.*
- ▶ *Principles have been laid down in section 66F of the Act for interpretation wherever services have to be treated differentially for any reason and also for determining the taxability of bundled services.*
- ▶ *The system of valuation of services for levy of service tax and of availment and utilization of Cenvat credits essentially remains the same with only incidental changes required for the new system of taxation*

### **What is service?**

*In the existing system, only the services specified in clause (105) of section 65 of the Finance Act, 1994 are taxed under the charging section 66. In the new system, all*

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<sup>18</sup> Relevant paras from TRU DOF No 334/1/2012-TRU dated 16 March 2012

services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under section 66B. This Note explains the various ingredients and aspects of the definition of service. 'Service' has been defined in clause (44) of the new section 65B and means –

- any activity
- for consideration
- carried out by a person for another
- and includes a declared service.

The said definition further provides that 'Service' does not include –

- 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
- a transaction only in (iii) money or (iv) actionable claim
- any service provided by an employee to an employer in the course of the employment.
- fees payable to a court or a tribunal set up under a law for the time being in force

There are three explanations appended to the definition of 'service' which are dealt with in later part of this Guidance Note. Each of the ingredients bulleted above have been explained in the points below.

#### Taxability of service

The taxability of services or the charge of service tax has been specified in section 66B of the Act. To be a taxable a service should be –

- provided or agreed to be provided by a person to another
- in the taxable territory
- and should not be specified in the negative list.

#### **Provided in the taxable territory**

- Taxable territory has been defined in section 65B of the Act as the territory to which the Act applies i.e the whole of territory of India other than the State of Jammu and Kashmir.
- Detailed rules called the Place of Provision of Service Rules, 2012 have been made which determine the place of provision of service depending on the nature and description of service.
- Please refer to the Place of Provision of Service Rules, 2012

#### Rules of interpretation

Despite doing away with the service-specific descriptions, there will be some descriptions where some differential treatment will be available to a service or a class of services.

*Section 66F lays down the principles of interpretation of specified descriptions of services and bundled services.*

***Principles for interpretation of specified descriptions of services***

*Although the negative list approach largely obviates the need for descriptions of services, such descriptions continue to exist in the following areas –*

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

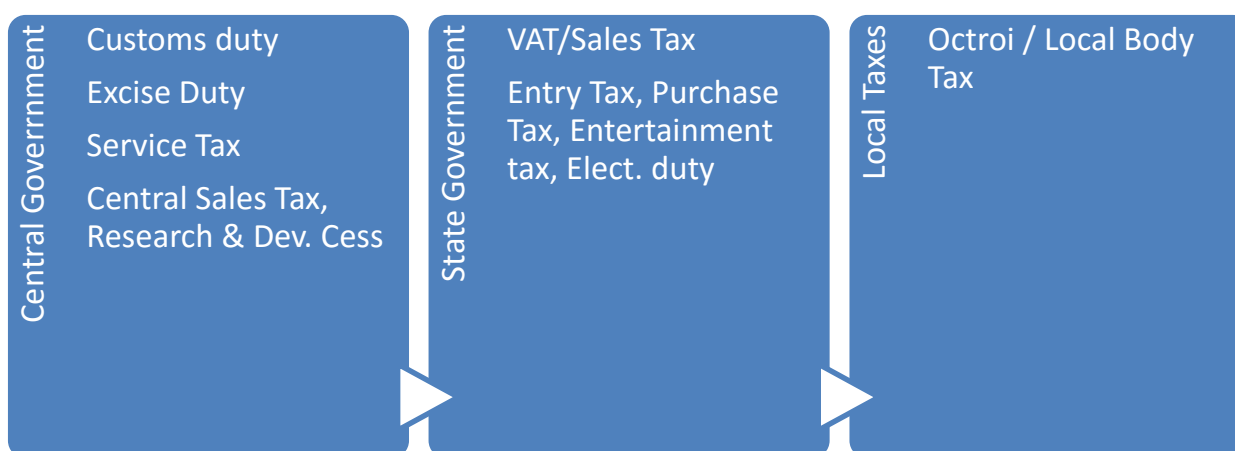
## 2. EXISTING INDIRECT TAX SYSTEM IN INDIA

As per the Constitution of India, the taxing powers of the Central Government encompass taxes on income (except agricultural income), excise duty on goods manufactured in India (other than alcohol for human consumption), customs duty, inter-state sale of goods etc. The taxing powers of the State Governments include the power to tax agricultural income, excise duty on alcohol for human consumption, sales tax on intra-State sale of goods etc.

On a high level basis, indirect taxes in the country can be categorised in three baskets

- Central level indirect taxes : Customs duty, Excise duty, Service Tax etc
- State level indirect taxes: VAT, Entry Tax, Purchase Tax etc
- Local level indirect taxes: Octroi etc

The following diagram captures the aforesaid:



### *Key features of specified indirect taxes:*

SR	Indirect Tax	Key features
1	Customs duty	<ul style="list-style-type: none"> <li>- Customs duty is applicable on import of goods into India</li> <li>- Customs duty is payable by the importer</li> <li>- Rate of Customs duty is specified in the Customs Tariff</li> <li>- Generic rate of Customs duty is 28.85% which comprises the following:</li> </ul>

		<ul style="list-style-type: none"> <li>a. Basic Customs Duty (generic rate is 10%)</li> <li>b. Additional Duty of Customs in lieu of excise<sup>19</sup> (generic rate is 12.50%)</li> <li>c. Additional Duty of Customs in lieu of VAT<sup>20</sup> (generic rate is 4%)</li> <li>d.</li> </ul> <ul style="list-style-type: none"> <li>- Customs duty is levied and governed under the Customs Act, 1962 and the Rules made thereunder</li> </ul>
<b>2</b>	Excise duty	<ul style="list-style-type: none"> <li>- Excise duty is applicable on 'manufacture' of goods in India</li> <li>- 'Manufacture' typically implies a process at the end of which a new and different article, having a distinctive name, character or use, emerges.</li> <li>- Excise duty is payable by the manufacturer</li> <li>- Rate of Excise duty is specified in the Excise Tariff</li> <li>- Generic rate of Excise duty is 12.50%. Further, certain goods are liable to concessional rate of Excise duty</li> <li>- Excise duty is levied and governed under the Excise Act, 1944 and the Rules made thereunder</li> </ul>
<b>3</b>	Service Tax	<ul style="list-style-type: none"> <li>- Service tax is applicable on provision of all services</li> <li>- Service tax is not applicable on 'Negative list'<sup>21</sup> services and certain exempt services<sup>22</sup></li> <li>- Service tax is payable by Service provider. However, in certain cases service recipient is also liable to pay service tax<sup>23</sup>.</li> <li>- Rate of Service Tax is 14%. Further, for certain services abatement is provided<sup>24</sup></li> <li>- Service tax is levied and governed under the Finance Act, 1994 and the Rules made thereunder</li> </ul>
<b>4</b>	Research and Development Cess	<ul style="list-style-type: none"> <li>- Research and Development (R&amp;D) cess is applicable on import of technology through foreign collaborator</li> <li>- The rate of R&amp;D cess is 5%</li> <li>- R&amp;D cess is levied and governed under Research and Development Cess Act, 1986 and the Rules made thereunder</li> </ul>
<b>5</b>	VAT/ Sales Tax	<ul style="list-style-type: none"> <li>- VAT / Sales tax is applicable on sale of goods within a State</li> <li>- VAT is payable by the seller</li> <li>- Rate of VAT is State specific. Rate of VAT is specified in the VAT schedule of the State</li> <li>- Typically, the rate of VAT varies from 0% to 15%</li> <li>- VAT is levied and governed under the State specific VAT Act and the Rules made thereunder</li> </ul>
<b>6</b>	CST	<ul style="list-style-type: none"> <li>- CST is applicable on inter-State sale of goods</li> <li>- CST is payable by the seller</li> <li>- Rate of CST is 2% provided the buyer issues C form. If the buyer doesn't issue C form then CST is applicable at the rate equal to rate of VAT in the State from which goods are sold</li> <li>- CST is levied and governed under The Central Sales Tax Act, 1956 and the Rules made thereunder</li> </ul>
<b>7</b>	Entry Tax	<ul style="list-style-type: none"> <li>- Entry tax is applicable on entry of specified goods in the State</li> </ul>

<sup>19</sup> Also known as Counter-Veiling Duty/ CVD

<sup>20</sup> Also known as Special Additional Duty of Customs / SACD

<sup>21</sup> Negative List of services comprises of 17 services and is specified under Section 66D of Finance Act, 1994

<sup>22</sup> Exemption is provided to 39 services vide Not. No. 25/2012-ST

<sup>23</sup> Situations where service recipient is liable to pay ST (as recipient of service) is specified in Not. No. 30/2012-ST

<sup>24</sup> Abatement to various services is specified under Not. No. 26/2012-ST and Service Tax (Determination of Value of Services) Rules, 2006

		for sale, use or consumption
		- Entry tax is levied by various States in India
		- Entry tax is levied and governed under State specific Entry Tax Act and the Rules made thereunder
<b>8</b>	Octroi / Local Body Tax (LBT)	<ul style="list-style-type: none"> <li>- Octroi is levied by the Municipal Corporation on entry of specified goods in their jurisdiction for sale, use or consumption</li> <li>- Octroi is levied by various Municipal Corporations in the State of Maharashtra (such as Mumbai, Thane, Pune etc)</li> <li>- Octroi is levied and governed under Rules made by the Municipal Corporations</li> <li>- LBT is proposed to be introduced by substituting Octroi.</li> </ul>
<b>9</b>	Purchase Tax	<ul style="list-style-type: none"> <li>- Purchase tax is applicable on purchase of specified goods</li> <li>- Purchase Tax is a major source of revenue for Punjab and Haryana</li> <li>- In Punjab, Purchase Tax is levied under Punjab Value Added Tax Act, 2005</li> <li>- Its pertinent to note that in 2012, Maharashtra has also introduced Purchase Tax on cotton and oil seeds</li> </ul>
<b>10</b>	Entertainment tax	<ul style="list-style-type: none"> <li>- Entertainment tax is applicable on movie tickets, commercial shows etc</li> <li>- Entertainment tax is levied by the State Governments</li> <li>- The rate of entertainment tax varies from 0% to 110%<sup>25</sup></li> <li>- This source of revenue has grown with the advent of Pay Television Services in India. Since, entertainment is being provided through the services such as Broadcasting Services, DTH Services, Pay TV Services, Cable Services, etc. The component of entertainment is intrinsically intertwined in the transaction of service, that it cannot be separated from the whole transaction. Given the nature of transaction of service, it is being subjected to tax by the Union and the State governments both<sup>26</sup></li> </ul>

### *Current Indirect tax implications on various transactions*

A transaction in an economy can be one of the following type:

- a. Transaction in goods:
  - o Trading (i.e. buying and subsequently selling the goods)
  - o Manufacturing and subsequently selling of goods
- b. Transaction is services (such as provision of logistics services, advisory services, courier services etc)
- c. Transaction involving both goods and services (i.e. works contract such as contract for construction of compound wall wherein material alongwith labour is provided by the contractor)
- d. Transaction in immovable property
- e. Other transactions (such as employment, grants etc)

Transactions in an economy are subject to indirect taxes. We have given below the typical indirect tax implications on the aforesaid transactions:

<b>SR</b>	<b>Activity</b>	<b>Tax applicable</b>
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<sup>25</sup> Source [www.filmtvguildindia.org](http://www.filmtvguildindia.org)

<sup>26</sup> Source [www.en.wikipedia.org](http://www.en.wikipedia.org)

1	Trading – Sale to a customer located in same State (Intra-State sale)	Value Added Tax <sup>27</sup> (VAT) would be applicable on the sale to the customer
2	Trading – Sale to a customer located in different State (inter-State sale)	Central Sales Tax (CST) would be applicable on the customer sale to the customer
3	Manufacturing and subsequently intra-State sale of goods	- Excise duty on manufacture of goods - VAT on sale of goods
4	Manufacturing and subsequently inter-State sale of goods	- Excise duty on manufacture of goods - CST on sale of goods
5	Provision of services	Service Tax <sup>28</sup>
6	Works contracts (i.e. transaction involving both goods and services)	- VAT on 'goods' portion in works contract - Service Tax on 'service' portion in the works contract
7	Transaction of sale of an <b>completed</b> <sup>29</sup> immovable property	Stamp duty
8	Other transactions (such as employment, donation etc)	Income from salary, donation etc is subject matter of Income Tax

Apart from the aforesaid taxes, certain States and Municipal Corporations also levy Entry Tax, Octroi for entry of goods for consumption/ sale in their respective jurisdiction.

From the aforesaid discussion, it can be observed from the above that currently the indirect tax system in the India is governed by the 'taxable events' (such as manufacture, sale, provision of service etc). However, this approach to levy and collect indirect tax has its own limitations and it results in inefficiency in certain cases due to non-availability of input tax credit.

<sup>27</sup> Also known as Sales tax

<sup>28</sup> However, certain specified services such as entertainment, advertisement etc may be liable to State VAT

<sup>29</sup> W.e.f. 1 July 2010, Service tax has been made applicable on sale of property before completion certificate is received for the same.

### 3. SERVICE TAX — STATUTORY PROVISIONS

#### **SECTIONS 64 TO 96-I (CHAPTERS V and VA) OF THE FINANCE ACT, 1994 PROVIDING FOR SERVICE TAX)**

##### **SECTION 64. Extent, commencement and application. —**

- (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- (3) It shall apply to taxable services provided on or after the commencement of this Chapter.

##### **65B. Interpretations<sup>30</sup>.**

In this Chapter, unless the context otherwise requires,-

- (1) "actionable claim"** shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882.);
- (2) "advertisement"** means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;
- (3) "agriculture"** means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;
- (4) "agricultural extension"** means application of scientific research and knowledge to agricultural practices through farmer education or training<sup>31</sup>;

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<sup>30</sup> Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

<sup>31</sup> From the language it may be stated that the exemption is restricted to '*Application of scientific research and knowledge to agricultural practices through farmer education or training*'. The term farmer precedes 'education or training'. Herein the context in which the term 'education or training' is used needs to be understood. Typically, the farmers in India are either illiterate or less educated. Thus, a knowledge sharing platform, per-se, which adds knowledge and thus 'educate or train' the farmers would become eligible. Further, the exemption is available for 'application of Scientific research and knowledge to agricultural practices'. Thus, in case scientific research,



- (5) "agricultural produce"** means any produce of agriculture on which either no further 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<sup>32</sup>;
- (6) "Agricultural Produce Marketing Committee or Board"** means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce;
- (7) "aircraft"** has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934 (22 of 1934.);
- (8) "airport"** has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994.);
- (10) "Appellate Tribunal"** means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962.);

<sup>33</sup> ~~(11) "approved vocational education course" means,~~

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knowledge, know-how etc about agricultural practices etc is shared with the farmers for application in farm then the same will be eligible for exemption.

<sup>32</sup> The Finance Act 1994 exempts storage or warehousing of 'agricultural produce'. In this context, question had arisen as to whether 'rice' is an 'agricultural produce' or not? In this regard, the H'ble Finance Minister had vide letter dated 9 November 2013 had clarified that 'paddy' is an 'agricultural produce' but 'rice' is not since it is subject to processing (de-husking etc) and it will not qualify as 'agricultural produce' and thus its storage, warehousing etc will be liable to service tax. Now, as a relief, vide Notification No. 4/2014-ST dated 17 February 2014, the Finance Ministry has exempted storage or warehousing, loading, unloading, packing of 'rice' from service tax.

However, this Notification is half-hearted as the exemption is provided but it will be applicable for period from 17 February 2014 onwards (i.e. prospective), thus implying that the Government considers this service was taxable prior to 17 February 2014. This leads to a paradox as the Government thinks the storage, warehousing etc of 'rice' as exempt with effect from 17 February 2014 onwards but taxable prior to 17 February 2014. Though the interpretation of the Finance Ministry that 'rice' is not an 'agricultural produce' is itself doubtful still the warehousing industry may receive notices asking them to pay service tax for the period prior to 17 February 2014. In our view, it is of utmost importance that the aforesaid services are exempted retrospectively.

<sup>33</sup> [Deleted by Finance Bill, 2016 and incorporated in Notification No. 25/2012-ST. W.e.f. enactment of Finance Bill, 2016](#)

~~(i) 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<sup>34</sup> offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961.); or~~

~~(ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment~~

~~(iii) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India;~~

**(12) "assessee"** means a person liable to pay tax and includes his agent;

**(13) "associated enterprise"** shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961 (43 of 1961.);

**(14) "authorised dealer of foreign exchange"** shall have the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999.);

**(15) "betting or gambling"** means 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;

**(16) "Board"** means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963.);

**(17) "business entity"** means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;

**(18) "Central Electricity Authority"** means the authority constituted under section 3 of the Electricity (Supply) Act, 1948 (54 of 1948.);

**(19) "Central Transmission Utility"** shall have the meaning assigned to it in clause (10) of section 2 of the Electricity Act, 2003 (36 of 2003.);

**(20) "courier agency"** means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;

**(21) "customs station"** shall have the meaning assigned to it in clause (13) of section 2 of the Customs Act, 1962 (52 of 1962.);

**(22) "declared service"** means any activity carried out by a person for another person for consideration and declared as such under section 66E;

**(23) "electricity transmission or distribution utility"** means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003 (36 of 2003.); or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;

**(23A) "foreman of chit fund" shall have the same meaning as is assigned to the term "foreman" in clause (j) of section 2 of the Chit Funds Act, 1982<sup>35</sup>**

<sup>36</sup>**(25) "goods"** means every kind of movable property other than actionable claim and money; and includes securities<sup>37</sup>, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

**(26) "goods transport agency"** means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called<sup>38</sup>; **(26A) "Government" means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not**

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<sup>35</sup> Inserted by Finance Act, 2015 from 14.05.2015

<sup>36</sup> Deleted by Finance Act, 2015 from 14.05.2015

<sup>37</sup> 'Securities' is included in the definition of 'goods' so as to exclude the same from the definition of 'service' (as 'service' excludes transaction in 'goods')

<sup>38</sup> In the case of U P State Sugar Corp Ltd [2011 (24) S.T.R. 423 (Tri - Del)] the Tribunal *prima-facie* held that as no proforma for Consignment Note is prescribed hence issue of formal Consignment Note not mandatory for levy of Service tax [Stay case]

**required to be kept in accordance with article 150 of the Constitution or the rules made thereunder** <sup>39</sup>

**(27) "India"** means,-

- (a) the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;
- (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976.);
- (c) the seabed and the subsoil underlying the territorial waters;
- (d) the air space above its territory and territorial waters; and
- (e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

**(28) "information technology software"** means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment;

**(29) "inland waterway"** means national waterways as defined in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 (82 of 1985.) or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917 (1 of 1917.);

**(30) "interest"** means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has been utilised;

**(31) "local authority"** means-

- (a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;

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<sup>39</sup> Inserted by Finance Act, 2015 from 14.05.2015

- (b) a Municipality as referred to in clause (e) of article 243P of the Constitution;
- (c) 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;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006.);
- (e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;
- (f) a development board constituted under article 371 of the Constitution; or
- (g) a regional council constituted under article 371A of the Constitution;

(31A) "lottery distributor or selling agent" means a person appointed or authorised by a State for the purposes of promoting, marketing, selling or facilitating in organising lottery of any kind, in any manner, organised by such State in accordance with the provisions of the Lotteries (Regulation) Act, 1998<sup>40</sup>

**(32) "metered cab"** means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 (59 of 1988.) and the rules made thereunder but does not include radio taxi<sup>41</sup>;

**(33) "money"** means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any similar instrument but shall not include any currency that is held for its numismatic value;

**(34) "negative list"** means the services which are listed in section 66D;

**(35) "non-taxable territory"** means the territory which is outside the taxable territory<sup>42</sup>;

**(36) "notification"** means notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;

<sup>40</sup> Inserted by Finance Act, 2015 from 14.05.2015

<sup>41</sup> With effect from date to be notified

<sup>42</sup> Non-taxable territory would mean Jammu & Kashmir and rest of the world

**(37) "person"<sup>43</sup>** includes,-

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a society,
- (v) a limited liability partnership,
- (vi) a firm,
- (vii) an association of persons or body of individuals, whether incorporated or not,
- (viii) Government,
- (ix) a local authority, or
- (x) every artificial juridical person, not falling within any of the preceding sub-clauses;

**(38) "port"** has the meaning assigned to it in clause (g) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963.) or in clause (4) of section 3 of the Indian Ports Act, 1908 (15 of 1908.);

**(39) "prescribed"** means prescribed by rules made under this Chapter;

(39a) "print media" means,—

(i) "book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;

(ii) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867<sup>44</sup>

**(40) "process amounting to manufacture or production of goods"<sup>45</sup>**

means a process on which duties of excise are leviable under section 3 of

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<sup>43</sup> It may be noted that in the Positive List Regime (i.e. upto 30 June 2012) the term 'person' was not defined in the Finance Act, 1994 or Rules made thereunder. Thus upto 30.06.2012 the definition of the term "**person**" as defined in the General Clauses Act, 1897 should be referred to, which defines the term "person" as Sec.3 (42) "*person shall include any company or association or body of individuals, whether incorporated or not;* However, from 1.07.2012 as the term 'person' is specifically defined ,it should be referred.

<sup>44</sup> With effect from date to be notified

<sup>45</sup> Business Support Services - Processes amounting to manufacture - Same activity cannot be considered as manufacturing and subjected to Excise levy and also considered as service and subjected to Service Tax - **Jubilant Industries Limited**

the Central Excise Act, 1944 (1 of 1944) or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955<sup>46</sup> or any process amounting to manufacture of <sup>47</sup>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;

**(41) "renting"** means allowing, permitting or granting access, entry, occupation, use 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;

**(42) "Reserve Bank of India"** means the bank established under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934.);

**(43) "securities"** has the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956.);

**(44) "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

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

(ii) a transaction in money or actionable claim<sup>48</sup>;

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**[2013 (9) TMI 358 - CESTAT NEW DELHI]**

<sup>46</sup> Applicable from 10 May 2013

<sup>47</sup> Deleted by Finance Act, 2015 from 14.05.2015

<sup>48</sup> In the case of Future Gaming Solutions India Pvt Ltd 2013-TIOL-904-HC-Sikkim-ST, the High Court held that:

"70. *In view of the facts and circumstances and the discussions, our conclusions are as under:-*

(i) *In the light of Sub-Section (1) to Section 65B read with Sub-Section (44) thereof lottery is excluded from the definition of 'service' being 'actionable claim...*

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

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

*Explanation 1* For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,-

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

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

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

*Explanation 1A-* For the purposes of this clause, transaction in money shall not include, any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged:".

*Explanation 2.-* For the purposes of this Chapter,-

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons<sup>49</sup>;

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*(iii) The activity of the Petitioner comprising of promotions, organising, reselling or any other manner assisting in arranging of lottery tickets of the State Lotteries does not establish the relationship of a principal or an agent but rather that of a buyer and a seller and, on principal to principal basis in view of the nature of the transaction consisting of bulk purchases of lottery tickets by the Petitioner from the State Government on full payment on a discounted price as a natural business transaction and, other related features like there being no privity of contract between the State Government and the stockists, agents, resellers under the Petitioner"*

<sup>49</sup> In view of this clause, services provided by club to its members will attract service tax



(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons<sup>50</sup>;

(c) For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include--

(i) any activity relating to 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;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out--

(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998<sup>51</sup>

~~(a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;~~

(b) by a foreman of chit fund for conducting or organising a chit in any manner<sup>52</sup>

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<sup>50</sup> It may be noted that this clause would cover Jammu & Kashmir branch providing services to another Branch in say Pune or vice-versa

<sup>51</sup> Substituted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016

<sup>52</sup> Inserted by Finance Act, 2015 from 14.05.2015. It may be noted that *In a chit business, the subscription is tendered in any one of the forms of 'money' as defined in section 65B(33). It would, therefore, be a transaction in money. So considered, the transaction would fall within the exclusionary part of the definition of the word 'service' as being merely a transaction in money...The notification No.26/2012-ST dated 20.06.2012 issued is quashed to the extent of the entry in serial No.8 thereof.* Delhi Chit Fund Association 2013-TIOL-331-HC-DEL-ST - **SLP against High Court Order Dismissed by Supreme Court [UoI Vs Delhi Chit Fund Association 2014-TIOL-23-SC-ST]**

*Explanation 3.*- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

**(45) "Special Economic Zone"** has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005.);

**(46) "stage carriage"** shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988.);

**(47) "State Electricity Board"** means the Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948.);

**(48) "State Transmission Utility"** shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003 (36 of 2003.);

**(50) "tax"** means service tax leviable under the provisions of this Chapter;

**(51) "taxable service"** means any service on which service tax is leviable under section 66B ;

**(52) "taxable territory"** means the territory to which the provisions of this Chapter apply;

**(53) "vessel"** has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963.);

**(54) "works contract"** means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods **and** such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

**(55)** words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 ( 1 of 1944.) or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.'

**66B. Charge of service tax on and after Finance Act, 2012<sup>53</sup>.** There shall be levied a tax (hereinafter referred to as the service tax) at the rate of Fourteen per cent.<sup>54</sup> on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

<sup>55</sup>~~Explanation.~~ For the removal of doubts, it is hereby clarified that the references to the provisions of section 66 in Chapter V of the Finance Act, 1994(32 of 1994) or any other Act, for the purpose of levy and collection of service tax, shall be construed as references to the provisions of section 66B

**<sup>56</sup>66BA.**

- (1) For the purpose of levy and collection of service tax, any reference to section 66 in the Finance Act, 1994 or any other Act for the time being in force, shall be construed as reference to section 66B thereof.
- (2) The provisions of this section shall be deemed to have come into force on the 1st day of July, 2012

**66C. Determination of place of provision of service<sup>57</sup>.**

- (1) The Central Government may, **having regard to the nature and description of various services<sup>58</sup>**, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.
- (2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

**66D. Negative list of services<sup>59</sup>.** The negative list shall comprise of the following services, namely:--

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<sup>53</sup> Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

<sup>54</sup> Applicable from 01.07.2015. Also w.e.f 15.11.2015 Swachh Bharat Cess will applicable at the rate of 0.50% on the value of taxable thus taking the effective rate of tax to 14.50%

<sup>55</sup> Omitted from 10 May 2013

<sup>56</sup> Applicable from 10 May 2013

<sup>57</sup> Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

<sup>58</sup> From the language used in the section 66C it may be construed that section 66C permits determination of place of provision by '**having regard to the nature and description of various services**'. However, this principle is completely ignored in Rule 8 of Place of Provision of Services Rules, 2012

<sup>59</sup> Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

- (a) services **by** Government or a local authority excluding the following services to the extent they are not covered elsewhere—
- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government<sup>60</sup>;
  - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  - (iii) transport of goods or passengers; or
  - (iv) any service<sup>61</sup>, other than services covered under clauses (i) to (iii) above, provided to business entities;
- (b) services **by** the Reserve Bank of India<sup>62</sup>;
- (c) services **by** a foreign diplomatic mission located in India<sup>63</sup>;
- (d) services relating to agriculture or agricultural produce by way of —
- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed<sup>64</sup>testing;
  - (ii) supply of farm labour;
  - (iii) processes carried out at an 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 the essential characteristics of agricultural produce but make it only marketable for the primary market<sup>65</sup>;
  - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
  - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
  - (vi) agricultural extension services<sup>66</sup>;

<sup>60</sup> Only specific services such as speed post etc are liable to Service Tax. Thus, basic mail service, money order service, pension payment etc is not liable to Service Tax

<sup>61</sup> [Amended by Finance Act, 2015 Applicable w.e.f. from 01.04.2016 vide Notification No. 06/2016-ST and Notification No. 15/2016-ST](#)

<sup>62</sup> Services provided **BY** RBI are exempt (and not **TO** RBI)

<sup>63</sup> This exemption seems to be given in view of Vienna Convention (which provides for grants immunity from local laws to the missions)

<sup>64</sup> Omitted from 10 May 2013

<sup>65</sup> Such as shelling of paddy or cleaning of wheat

<sup>66</sup> As per Section 65B (4) "**agricultural extension**" means application of scientific research and knowledge to agricultural practices through farmer education or training

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods<sup>67</sup>;

(f) services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption<sup>68</sup>

<sup>69</sup> (g) selling of space for advertisements in print media<sup>70</sup>;

(h) service by way of access to a road or a bridge on payment of toll charges<sup>71</sup>;

(i) betting, gambling or lottery<sup>72</sup>

Explanation - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation 2 to clause (44) of section 65B<sup>73</sup>;

<sup>74</sup>(k) transmission or distribution of electricity by an electricity transmission or distribution utility<sup>75</sup>;

~~(l) services by way of—~~

~~(i) pre-school education and education up to higher secondary school or equivalent;~~

~~(ii) education as a part of a curriculum for obtaining a qualification recognised by any law<sup>76</sup> for the time being in force;~~

~~(iii) education as a part of an approved vocational education course<sup>77</sup>;~~

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<sup>67</sup> Refer Entry No. 54 to List II (State List) in Seventh Schedule to Constitution of India which reads as "Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I"

<sup>68</sup> Amended by Finance Act, 2015 applicable from a date to be notified.

<sup>69</sup> Refer Entry No. 55 to List II (State List) in Seventh Schedule to Constitution of India which reads as "Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television"

<sup>70</sup> Effective from a date to be notified

<sup>71</sup> Refer Entry No. 59 to List II (State List) in Seventh Schedule to Constitution of India which reads as "Tolls"

<sup>72</sup> Refer Entry No. 34 to List II (State List) in Seventh Schedule to Constitution of India which reads as "Betting and gambling"

<sup>73</sup> Inserted by Finance Act, 2015 applicable from 14.05.2015

<sup>74</sup> Deleted by Finance Act, 2015 w.e.f. 01.06.2015. New entry (Entry No. 47) has been inserted in Notification 25/2012-ST.

<sup>75</sup> Refer Entry No. 53 to List II (State List) in Seventh Schedule to Constitution of India which reads as "Taxes on consumption or sale of electricity"

~~<sup>76</sup> The legislature has not used the expression "conferred by law" or "conferred by statute". Thus even if the certificate/degree/diploma/qualification is not the product of a statute but has approval of some kind in 'law', would be exempt [2013 TIOL 430 HC DEL ST]~~

~~<sup>77</sup> Deleted by Finance Bill, 2016 and incorporated in Not No. 25/2012 w.e.f. its enactment~~

- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of—
- (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
  - (ii) *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers<sup>78</sup>, with or without accompanied belongings, by—
- ~~(i) a stage carriage<sup>79</sup>;~~
  - (ii) railways in a class other than—
    - (A) first class; or
    - (B) an airconditioned coach;
  - (iii) metro, monorail or tramway;
  - (iv) inland waterways;
  - (v) public transport, other than predominantly for tourism purpose, in a vessel, between places located in India; and
  - (vi) metered cabs<sup>80</sup> or auto rickshaws;
- (p) services by way of transportation of goods<sup>81</sup>—
- (i) by road except the services of—
    - (A) a goods transportation agency; or
    - (B) a courier agency;
  - ~~(ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance<sup>82</sup>; or~~
  - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

**66E Declared Services<sup>83</sup>.** The following shall constitute declared services, namely:--

<sup>78</sup> Refer Entry No. 56 to List II (State List) in Seventh Schedule to Constitution of India which reads as "*Taxes on goods and passengers carried by road or on inland waterways*"

<sup>79</sup> Deleted by Finance Bill, 2016. W.e.f. from 01.06.2016

<sup>80</sup> Effective from a date to be notified

<sup>81</sup> Ibid

<sup>82</sup> Deleted by Finance Bill, 2016. However, such services by Aircraft will be exempt under in Notification No. 25/2012-ST w.e.f. from 01.06.2016.

<sup>83</sup> Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

- (a) renting of immovable property<sup>84</sup>;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority<sup>85</sup>.

*Explanation.*— For the purposes of this clause,—

- (I) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:--
  - (A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972.); or
  - (B) chartered engineer registered with the Institution of Engineers (India); or
  - (C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (II) the expression "**construction**" includes **additions, alterations, replacements or remodeling of any existing civil structure**;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right<sup>86</sup>;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software<sup>8788</sup>;

<sup>84</sup> Refer Entry No. 49 to List II (State List) in Seventh Schedule to Constitution of India which reads as "Taxes on lands and buildings". Whether collection of Service Tax on 'Renting of immovable property' amounts to "Taxes on lands and buildings" or is it on 'income' arising out of land and building has been long a subject matter of contention – Refer Tamil Nadu Kalyana Mandapam Assn. v. Union of India – 2006 (3) STR 260 (SC) and Home Solutions Retail (India) Ltd 2011 (24) STR 129 (Del)

<sup>85</sup> The Apex Court in the case of Larson and Toubro [2013-TIOL-SC-CT-LB] has held that: '*It may, however, be clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser*'

<sup>86</sup> IPR in normal trade parlance means copyright, patents, trademarks, designs, any other similar right to an intangible property. Also, there is no condition regarding the law under which an intellectual right should be registered. Further, **permanent** transfers do not come under the purview of this entry [Thermax Ltd 201-TIOL1092-CESTAT-MUM].

<sup>87</sup> It is a settled position of law that pre-packaged or canned software which is put on a media is in the nature of goods [Supreme Court judgment in case of Tata Consultancy Services vs State of Andhra Pradesh [2002(178) ELT22(SC) refers]. Sale of pre-packaged or canned software is, therefore, in the nature of sale of goods and is not

- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;
- (g) activities in relation to delivery of goods on hire purchase or any system of payment by installments;
- (h) **service portion** in the execution of a works contract;
- (i) **service portion**<sup>89</sup> 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.
- (j) [assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof](#)<sup>90</sup>

**66F Principles of interpretation of specified descriptions of services or bundled services**<sup>91</sup>. (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service<sup>92</sup>

#### **Illustration**

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or

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covered in this entry. License to use software which does not involve the transfer of 'right to use' would neither be a transfer of title in goods nor a deemed sale of goods. Such an activity would fall in the ambit of definition of 'service' and also in the declared service category specified in clause (f) of section 66E [Refer Para 6.4.4 of Education Guide for details]

<sup>88</sup> [Sale of software recorded on media under Chapter 85 of First Schedule of Central Excise Tariff Act, 1985 is exempt from service tax vide Notification No. 11/2016-ST w.e.f. 01.03.2016. For conditions to be satisfied refer Notification](#)

<sup>89</sup> **Where element of service has been so declared and brought under Service Tax no Value Added Tax can be imposed thereon **VALLEY HOTEL & RESORTS 2014-TIOL-600-HC-DEL-VAT****

<sup>90</sup> [Inserted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016](#)

<sup>91</sup> Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

<sup>92</sup> Provision of access to any road or bridge on payment of toll' is a specified entry in the negative list in section 66D of the Act. Any service provided in relation to collection of tolls or for security of a toll road would be in the nature of service used for providing such specified service and will not be entitled to the benefit of the negative list entry. [Refer Para 9. 1.1 of Education Guide for details]



commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax

- (2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description<sup>93</sup>.
- (3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely:--
- (a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character<sup>94</sup>;
  - (b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax<sup>95</sup>.

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

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<sup>93</sup> The services provided by a real estate agent are in the nature of intermediary services relating to immovable property. As per the Place of Provision of Service Rule, 2012, the place of provision of services provided in relation to immovable property is the location of the immovable property. However in terms of the rule 5 pertaining to services provided by an intermediary the place of provision of service is where the intermediary is located. Since Rule 5 provides a specific description of 'estate agent', the same shall prevail [Refer Para 9. 1.2 of Education Guide for details]

<sup>94</sup> Eg. A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation [Refer Para 9.2.1 of Education Guide for details]

<sup>95</sup> Eg. A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property [Refer Para 9.2.2 of Education Guide for details]

**SECTION 67. Valuation of taxable services for charging service tax. —**

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

- (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
- (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;
- (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner<sup>96</sup>.

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

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

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

**Explanation.** — For the purposes of this section, —

- (a) <sup>97</sup>“consideration” includes
  - i. any amount that is payable for the taxable services provided or to

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<sup>96</sup> Rule 3 of Valuation Rules was amended vide Not. No. 24/2012-ST w.e.f. 1.7.2012 to incorporate that it is applicable only in cases 'where such value is not ascertainable'. In this regard, the CBEC vide its Circular 334/1/2012-TRU dated 16.03.2012 had clarified that '...it is proposed to amend Rule 3 of valuation rules to provide that 'prescribed manner' in Rule 3 will be **applicable only in the cases where valuation is not ascertainable**. At present Rule 3 has been inadvertently made applicable to situation where consideration received is not wholly or partly consisting of money, which is fully covered by the Act.' Thus, if the value can be determined in terms of section 67 (1) (ii) itself, then **reference need not be made** to section 67 (1) (iii) (and in-turn to Valuation Rules).

<sup>97</sup> Substituted by Finance Act, 2015 w.e.f 14.05.2015 prior to substitution the clause read as under: 'any amount that is payable for the taxable services provided or to be provided'

be provided<sup>98</sup>;

- ii. any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed<sup>99</sup>
  - iii. any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket
- (c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

**67A. Date of determination of rate of tax, value of taxable service and rate of exchange**<sup>100</sup>. [\(1\)](#)<sup>101</sup> The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

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<sup>98</sup> **Notional interest** on security deposit taken for premises rented out on lease basis - No evidence led by revenue to show that such security deposit has influenced the rent received and it is only a presumption - Prima facie appellant has made a case in favour - 2013-TIOL-1068-CESTAT-MUM

<sup>99</sup> In the case of Intercontinental Consultants And Technocrats Pvt Ltd [2012-TIOL-966-HC-DEL-ST] wherein the Delhi High Court held inclusion of reimbursable costs as ultra vires Section 66 and 67 of the Act. Now, in order to overcome aforesaid judgment, by way of Explanation to Section 67 it is clarified that 'consideration' includes 'any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service'. as may be prescribed now been specifically provided in the section that reimbursement of expenses, incurred for providing taxable service by service provider, will chargeable to service tax. It is pertinent to note that „Pure agent“ reimbursement (subject to fulfillment of prescribed conditions under per Rule 5(2) of STR) will continue to be excluded from value of taxable service

<sup>100</sup> With effect from 28 May 2012

<sup>101</sup>[Re-numbered by Finance Bill, 2016](#)

(2) The time or the point in time with respect to the rate of service tax shall be such as may be prescribed<sup>102</sup>

*Explanation.— For the purposes of this section, "rate of exchange" means the rate of exchange determined in accordance with such rules as may be prescribed<sup>103</sup>.* ~~*Explanation.— For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the Explanation to section 14 of the Customs Act, 1962 (52 of 1962.).*~~

**SECTION 68. Payment of service tax.** — (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B<sup>104</sup> in such manner and within such period as may be prescribed<sup>105</sup>.

(2) Notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be notified<sup>106</sup> by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66B<sup>107</sup> and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider<sup>108</sup>.

<sup>102</sup> [Inserted by Finance Bill, 2016 to obtain specific powers to specify Point of Taxation Rules, 2011 w.e.f. enactment of Finance Bill, 2016](#)

<sup>103</sup> Effective from a date to be notified

<sup>104</sup> Substituted vide Service Tax (Removal of Difficulty) Order, 2012

<sup>105</sup> Service recipient is required to reimburse the Service Tax to the service provider: service tax is statutory liability. It is a tax which is required to be collected by the service provider from the person to whom service is provided, and thereafter to be deposited with government treasury within the prescribed time. Thus essentially the statute is being imposing the tax upon the person to whom service is being provided, and the service provider is merely a collecting agency. The respondent no.2 is directed to make reimbursement of service tax to the petitioner. **Bhagwati Security Services 2014-TIOL-33-HC-ALL-ST**

<sup>106</sup> Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

<sup>107</sup> Substituted vide Service Tax (Removal of Difficulty) Order, 2012

<sup>108</sup> Applicable wef 1 July 2012 vide Not. No. 19/2012-ST dated 5 June 2012

### **SECTION 69. Registration. —**

- (1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise
- (2) The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed.

### **SECTION 70. Furnishing of returns. —**

- (1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding **twenty thousand rupees**, for delayed furnishing of return, as may be prescribed<sup>109</sup>.
- (2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

### **SECTION 71. Scheme for submission of Returns through Service Tax Preparers. —**

(1) Without prejudice to the provisions of section 70, the Board may, by notification in the Official Gazette, frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70, and authorise a Service Tax Return Preparer to act as such under the Scheme.

- (2) A Service Tax Return Preparer shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.
- (3) For the purposes of this section, —
  - (a) "Service Tax Return Preparer" means any individual, who has been

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<sup>109</sup> This penalty is applicable for delayed or non-filing of Service Tax returns. Upto 8.04.2011, this penalty was only Rs 2,000. This penalty is on a very high side as in certain case the Service Tax liability may be Rs say 3,000 but penalty could go upto Rs 20,000. Government should consider restricting this penalty upto the maximum of Service Tax liability.

authorised to act as a Service Tax Return Preparer under the Scheme framed under this section;

(b) "person or class of persons" means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.

(4) The Scheme framed by the Board under this section may provide for the following, namely :—

(a) the manner in which and the period for which the Service Tax Return Preparer shall be authorised under sub-section (1);

(b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer;

(c) the code of conduct for the Service Tax Return Preparer;

(d) the duties and obligations of the Service Tax Return Preparer;

(e) the circumstances under which the authorisation given to a Service Tax Return Preparer may be withdrawn;

(f) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.

**SECTION 72. Best judgment assessment.** — If any person, liable to pay service tax, —

(a) fails to furnish the return under section 70;

(b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

**72A Special audit**<sup>110</sup>.

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<sup>110</sup> With effect from 28 May 2012

- (1) If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person"),
- (i) has failed to declare or determine the value of a taxable service correctly;
  - or
  - (ii) has availed and utilised credit of duty or tax paid-
    - (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 wilful 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, he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.
- (2) The chartered accountant or cost accountant referred to in sub-section (1) shall, within the period specified by the said Commissioner, submit a report duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified by him.
- (3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force.
- (4) The person liable to pay tax shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilised in any proceeding under the provisions of this Chapter or rules made thereunder.

*Explanation.*— For the purposes of this section,—

- (i) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949(38 of 1949.);
- (ii) "cost accountant" shall have the meaning assigned to it in clause (b) of sub-

section (1) of section 2 of the Cost and Works Accountants Act, 1959(23 of 1959.).'

**SECTION 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded.** — (1) Where any service tax has not

been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, **within ~~eighteen—monthsthirty~~ month<sup>111</sup>~~112~~** from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

<sup>113</sup>**Provided** that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "**eighteen months**<sup>114</sup>", the words "five years" had been substituted<sup>115</sup>.

<sup>111</sup> [Substituted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016](#)

~~<sup>112</sup> [With effect from 28 May 2012](#)~~

<sup>113</sup> Once the Commissioner (Appeals) has come to a finding that for the relevant period, there was genuine cause for confusion regarding the correct legal position and also scope for doubt about the service tax liability on GTA as the 'Commercial concern' for non-imposition of penalty then the same cause is also to be factored in to conclude that extended period of limitation cannot be invoked - [The Saswad Mali Sugar Factory Ltd 2013-TIOL-898-HC-MUM-ST](#)

<sup>114</sup> With effect from 28 May 2012

<sup>115</sup> The Supreme Court has observed in the case of Cosmic Dye Chemical [1995 (75) ELT 721 (SC)] observed that—

- Intent to evade duty is built in to the expressions 'fraud' and 'collusion'
- 'Mis-statement' and 'suppression' have been qualified by immediately preceding words 'willful'
- 'Contravention of any of the provisions of this Act or rules' has been qualified by the immediately following words 'with intent to evade payment of duty'.



**Explanation.** — Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of eighteen months<sup>116</sup> or five years, as the case may be.

(1A)<sup>117</sup> Notwithstanding anything contained in sub-section (1) (except the period of ~~eighteen months~~thirty months<sup>118</sup> of serving the notice for recovery of service tax), 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.

(1B) Notwithstanding anything contained in sub-section (1), in a case where the amount of service tax payable has been self-assessed in the return furnished under sub-section (1) of section 70, but not paid either in full or in part, the same shall be recovered along with interest thereon in any of the modes specified in section 87, without service of notice under sub-section (1)<sup>119</sup>

(2) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined :

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Thus, to invoke the proviso to the section 73 (1) of the Finance Act, 1994 and the extended period of limitation Department should prove that the assessee has made a misstatement or suppression which is 'willful' or has acted with 'intent to evade payment of duty'.

<sup>116</sup> With effect from 28 May 2012

<sup>117</sup> With effect from 28 May 2012

<sup>118</sup> [Substituted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016](#)

<sup>119</sup> Applicable from 14.05.2015

<sup>120</sup>(2A) Where any appellate authority or tribunal or court concludes that the notice issued under the proviso to sub-section (1) is not sustainable for the reason that the charge of,—

(a) fraud; or

(b) collusion; or

(c) wilful misstatement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax,

has not been established against the person chargeable with the service tax, to whom the notice was issued, the Central Excise Officer shall determine the service tax payable by such person for the period of ~~eighteen months~~thirty months<sup>121</sup>, as if the notice was issued for the offences for which limitation of eighteen months applies under sub-section (1)

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his **own ascertainment** thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information **shall not serve any notice** under sub-section (1) in respect of the amount so paid<sup>122</sup>:

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<sup>120</sup> Applicable from 10 May 2013

<sup>121</sup> [Substituted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016](#)

<sup>122</sup> Even, CBEC vide **Circular F. No. 137/167/2006-CX-4**, dated 3-10-2007 clarified that sub-section (3) of Section 73 provides for conclusion of adjudication proceedings in respect of person who has voluntarily deposited the service tax. The relevant extract of the circular is reproduced below:

"2. A question has been raised as to whether the conclusion of proceedings in such cases is limited to the action taken under section 73 of the Act or all proceedings under the Finance Act, 1994, including those under section 76, 77 and 78, get concluded.

3. The issue has been examined. The intention of section 73(1A) has already been explained vide para 8(g) of the post budget instructions issued by TRU vide D.O.F. No. 334/4/2006-TRU., dated 28-2-2006 [2006 (4) S.T.R. C30], wherein it has been clarified that this sub-section provides for conclusion of adjudication proceedings in respect of person who has voluntarily deposited the service tax.

3.1 The relevant portion of section 73 is reproduced below-

**Provided** that the Central Excise Officer may determine the amount of short-payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of "~~eighteen months~~<sup>123</sup>thirty months<sup>124</sup>" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

**Explanation.1** — For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer, but for this sub-section.

**Explanation 2.** — For the removal of doubts, it is hereby declared that **no penalty** under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon.

(4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or

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*"Provided further that where such person has paid service tax in full together with interest and penalty under sub-section (1A), the proceeding in respect of such person and other person to whom notices are served under sub-section (1) shall be deemed to be concluded."*

*Thus, law prescribes conclusion of proceedings against such person to whom SCN is issued under sub-section (1) of section 73. Therefore, it is not merely a conclusion under sub-section (1), but conclusion of all proceeding against such person. **Similar is the position in respect of sub-section (3) of section 73.***

*4. Accordingly, conclusion of proceeding in terms of sub-section (1A) and (3) of section 73 implies conclusion of entire proceedings under the Finance Act, 1994."*

<sup>123</sup> ~~With effect from 28 May 2012~~

<sup>124</sup> Substituted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016

- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.

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(4B) The Central Excise Officer shall determine the amount of service tax due under subsection (2)—

- (a) within six months from the date of notice where it is possible to do so, in respect of cases whose limitation is specified as eighteen months in sub-section (1)
  - (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A)
- (5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.
- (6) For the purposes of this section, "**relevant date**" means, —
- (i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —
    - (a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
    - (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
    - (c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;
  - (ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;
  - (iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.

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<sup>125</sup> Deleted w.e.f 14.05.2015

**SECTION 73A. Service tax collected from any person to be deposited with Central Government. —**

- (1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made thereunder from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.
- (2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.
- (3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.
- (4) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (3), determine the amount due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount so determined.
- (5) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (2) or sub-section (4), shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).
- (6) Where any surplus amount is left after the adjustment under sub-section (5), such amount shall either be credited to the Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944 (1 of 1944) or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B of the said Act and such person may make an application under that section in such

cases within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount.

**SECTION 73B. Interest on amount collected in excess. —**

Where an amount has been collected in excess of the tax assessed or determined and paid for any taxable service under this Chapter or the rules made thereunder from the recipient of such service, the person who is liable to pay such amount as determined under sub-section (4) of section 73A, shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent. and not exceeding twenty-four per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Chapter, but for the provisions contained in sub-section (4) of section 73A, till the date of payment of such amount :

**Provided** that in such cases where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B of the Central Excise Act, 1944 (1 of 1944), and such amount payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases, the interest shall be payable on the whole amount, including the amount already paid.

**Provided** further that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice issued under sub-section (3) of section 73A or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by three per cent. per annum.

**Explanation 1.** — Where the amount determined under sub-section (4) of section 73A is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such reduced amount.

**Explanation 2.** — Where the amount determined under sub-section (4) of section 73A is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such increased amount.

**SECTION 73C. Provisional attachment to protect revenue in certain cases. —**

- (1) Where, during the pendency of any proceeding under section 73 or section 73A, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 73 or sub-section (3) of section 73A, as the case may be, in such manner as may be prescribed.
- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1) :  
**Provided** that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years.

**SECTION 73D. Publication of information in respect of persons in certain cases. —**

- (1) If the Central Government is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings under this Chapter in respect of such person, it may cause to be published such names and particulars in such manner as may be prescribed.
- (2) No publication under this section shall be made in relation to any penalty imposed under this Chapter until the time for presenting an appeal to the Commissioner (Appeals) under section 85 or the Appellate Tribunal under section 86, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

**Explanation.** — In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, shall also be published if, in the opinion of the Central Government, circumstances of the case justify it.

**SECTION 74. Rectification of mistake. —**

- (1) With a view to rectifying any mistake apparent from the record, the Central Excise Officer who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order.
- (2) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the Central Excise Officer passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.
- (3) Subject to the other provisions of this section, the Central Excise Officer concerned -
  - (a) may make an amendment under sub-section (1) of his own motion; or
  - (b) shall make such amendment if any mistake is brought to his notice by the assessee or the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals).
- (4) An amendment, which has the effect of enhancing the liability of the assessee or reducing a refund, shall not be made under this section unless the Central Excise Officer concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.
- (5) Where an amendment is made under this section, an order shall be passed in writing by the Central Excise Officer concerned.
- (6) Subject to the other provisions of this Chapter where any such amendment has the effect of reducing the liability of an assessee or increasing the refund, the Central Excise Officer shall make any refund which may be due to such assessee.
- (7) Where any such amendment has the effect of enhancing the liability of the



assessee or reducing the refund already made, the Central Excise Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

**SECTION 75. Interest on delayed payment of service tax.** — Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed.

Provided that in the case of a person who collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government, on or before the date on which such payment is due, the Central Government may, by notification in the Official Gazette, specify such other rate of interest, as it may deem necessary<sup>126127</sup>~~Provided that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by three per cent. per annum.~~<sup>128</sup>

**SECTION 75A.** \* \* \* \*

**SECTION 76. Penalty for failure to pay service tax.** — (1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under

<sup>126</sup> Substituted by Finance Bill, 2016 w.e.f from enactment of Finance Bill, 2016

<sup>127</sup> Refer Notification No. 13/2016-ST for rate of interest

<sup>128</sup> As per TRU In case of assesseees, whose value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakh, the rate of interest on delayed payment of service tax will be 12%

sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a **penalty not exceeding ten per cent. of the amount of such service tax** Provided that where such service tax and interest is paid **within a period of thirty days of-**

(i) the date of **service of notice** under sub-section (1) of section 73, **no penalty shall be payable;**

(ii) the date of **receipt of the order** of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, **the penalty payable shall be twenty-five per cent. of the penalty imposed** in that order, only if such reduced penalty is also paid within such period.

(2) Where the Commissioner (Appeals), the Appellate Tribunal or, the court, as the case may be, modifies the service tax determined under sub-section (2) of section 73, then, the amount of penalty payable thereon, shall also stand modified accordingly, and the benefit of reduced penalty under the proviso to sub-section (1) shall be available if such service tax, interest and reduced penalty so payable, is paid within a period of thirty days from the date of receipt of the order by which such modification is made<sup>129</sup>

**SECTION 77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere.** — (1) Any person, —

<sup>130</sup>(a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to **ten thousand rupees**

(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to ten thousand rupees;

(c) who fails to —

(i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or

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<sup>129</sup> Substituted by Finance Act, 2015 w.e.f. 14.05.2015

<sup>130</sup> Substituted from 10 May 2013

(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or

(iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,

shall be liable to a penalty which may extend to ten thousand rupees or two hundred rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to ten thousand rupees;

(e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ten thousand rupees.

(2) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees.

#### **SECTION 78. Penalty for suppressing, etc. of value of taxable services.**

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(1) Where any service tax has not been levied or paid, or has been short-levied or shortpaid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax Provided that where such service tax and interest is paid within a period of thirty days of –

(i) the date of service of notice under the proviso to sub-section (1) of section 73, **the penalty payable shall be fifteen per cent. of such service tax;**

(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, **the penalty payable shall be twenty-five per cent. of the service tax so determined**

Provided further that the benefit of reduced penalty under the first proviso shall be available only if the amount of such reduced penalty is also paid within such period

(2) Where the Commissioner ( Appeals), the Appellate Tribunal or the court, as the case may be, modifies the service tax determined under sub-section (2) of section 73, then, the amount of penalty payable thereon, shall also stand modified accordingly, and the benefit of reduced penalty under the first proviso to sub-section (1) shall be available if such service tax, interest and reduced penalty so payable, **is paid within a period of thirty days from the date of receipt of the order by which such modification is made** <sup>131</sup>

<sup>132</sup>**78A.** Where a company has committed any of the following contraventions, namely:—

- (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) avilment 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,

then **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 the conduct of business of such company and was **knowingly** concerned with such contravention, shall be liable to a penalty which may extend to **one lakh rupees**

[Explanation.— For the removal of doubts, it is hereby clarified that where any service tax has not been levied or paid or has been short-levied or short-paid or](#)

<sup>131</sup> Substituted by Finance Act, 2015 w.e.f. 14.05.2015

<sup>132</sup> Inserted from 10 May 2013

erroneously refunded, and the proceedings with respect to a notice issued under sub-section (1) of section 73 or the proviso to sub-section (1) of section 73 is concluded in accordance with the provisions of clause (i) of the first proviso to section 76 or clause (i) of the second proviso to section 78, as the case may be, the proceedings pending against any person under this section shall also be deemed to have been concluded<sup>133</sup>

**78B (1) Where, in any case,--**

(a) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and **no notice has been served** under sub-section (1) of section 73 or under the proviso thereto, before the date on which the Finance Bill, 2015 receives the assent of the President; or

(b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and **a notice has been served** under sub-section (1) of section 73 or under the proviso thereto, **but no order has been passed** under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President,

then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable

(2) Notwithstanding anything contained in sub-section (1), in respect of cases falling under the provisions of sub-section (4A) of section 73 as was in force prior to the date of coming into force of the Finance Act, 2015, where no notice under the proviso to sub-section (1) of section 73 has been served on any person or, where so served, no order has been passed under sub-section (2) of section 73, before such date, the penalty leviable shall not exceed fifty per cent. of the service tax.<sup>134</sup>

**SECTION 79.** \* \* \* \*

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**SECTION 81.** \* \* \*

**SECTION 82. Power to search premises. —**

<sup>133</sup> Inserted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016

<sup>134</sup> Inserted by Finance Act, 2015 w.e.f. 14.05.2015

<sup>135</sup> Deleted by Finance Act, 2015 w.e.f. 14.05.2015

“(1) Where the Joint Commissioner of Central Excise or Additional Commissioner of Central Excise or such other Central Excise officer as may be notified by the Board has reasons to believe that any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Chapter, are secreted in any place, he may authorise in writing any Central Excise officer to search for and seize or may himself search and seize such documents or books or things<sup>136</sup>

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches, shall, so far as may be, apply to searches under this section as they apply to searches under that Code.

**SECTION 83. Application of certain provisions of Act 1 of 1944.** — The provisions of the following sections of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :-

[sub-section (2A) of section 5A<sup>137</sup>, Subsection (2) of section]<sup>138</sup> 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F<sup>139</sup>, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D 38A and 40.

**SECTION 83A. Power of adjudication.** — Where under this Chapter or the rules made thereunder any person is liable to a penalty, such penalty may be adjudged by the Central Excise Officer conferred with such power as the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, by notification in the Official Gazette, specify.

**SECTION 84. Appeals to Commissioner of Central Excise (Appeals).** — (1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for

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<sup>136</sup> WEF Presidential assent

<sup>137</sup> WEF Presidential assent

<sup>138</sup> Inserted from 10 May 2013

<sup>139</sup> With effect from 28 May 2012

the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

(2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

**Explanation.** — For the removal of doubts, it is hereby declared that any order passed by an adjudicating officer subordinate to the Commissioner of Central Excise immediately before the commencement of clause (C) of section 112 of the Finance (No. 2) Act, 2009, shall continue to be dealt with by the Commissioner of Central Excise as if this section had not been substituted.

### **SECTION 85. Appeals to the Commissioner of Central Excise (Appeals).**

— (1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this Chapter, made before the date on which the Finance Bill, 2012 receives the assent of the President<sup>140</sup> :

**Provided** that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

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<sup>140</sup> With effect from 28 May 2012

(3A)<sup>141</sup> An appeal shall be presented within **two months**<sup>142</sup> from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month."

(4) The Commissioner of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty :

**Provided** that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).

#### **SECTION 86. Appeals to Appellate Tribunal. —**

(1) Save as otherwise provided herein, an assessee<sup>143</sup> aggrieved by an order passed by a Commissioner of Central Excise under section 73 or section 83A \* \* \* , or an order passed by a Commissioner of Central Excise

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<sup>141</sup> With effect from 28 May 2012

<sup>142</sup> The materials available on record showed that order was passed by the original authority on 27.03.2012 and that the amendment came into force on 28.05.2012. Therefore the petitioner is justified in its contention that the appeal should have been taken up on file in accordance with the regulations in force prior to 28.05.2012- Winwind Power Energy Pvt Ltd [2013-TIOL-863-HC-MAD-ST](#)

<sup>143</sup> Substituted for 'Commissioner' by Finance Act, 2015. Applicable from 14.05.2015



(Appeals) under section 85, may appeal to the Appellate Tribunal against such order within **three months** of the date of receipt of the order<sup>144</sup>.

Provided that where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944

Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012, and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944<sup>145</sup>

(1A)(i) The Board may, by order, constitute such Committees as may be necessary for the purposes of this Chapter.

(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.

(2) The Committee of Chief Commissioners of Central Excise may, if it objects to any order passed by the Commissioner of Central Excise under section 73 or section 83A \* \* \* , direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order :

**Provided** that where the Committee of Chief Commissioners of Central Excise differs in its opinion against the order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise is not legal or proper, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

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<sup>144</sup> With effect from 28 May 2012

<sup>145</sup> Inserted by Finance Act, 2015 w.e.f. 14.05.2015

(2A) The Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any Central Excise Officer to appeal on its behalf to the Appellate Tribunal against the order :

**Provided** that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.

**Explanation.** — For the purposes of this sub-section, “jurisdictional Chief Commissioner” means the Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.

(3) Every appeal under sub-section (2) or sub-section (2A) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners or, as the case may be, the Committee of Commissioners.

(4) The Commissioner of Central Excise or any Central Excise Officer subordinate to him or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

- (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (1) or<sup>146</sup> sub-section (3) or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period.
- (6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of service tax and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, —
- (a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
  - (b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;
  - (c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees :

**Provided** that no fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2A) or a memorandum of cross-objections referred to in sub-section (4).

- (6A) Every application made before the Appellate Tribunal, —
- (a) in an appeal <sup>147</sup> for rectification of mistake or for any other purpose; or
  - (b) for restoration of an appeal or an application,
- shall be accompanied by a fee of five hundred rupees :

**Provided** that no such fee shall be payable in the case of an application

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<sup>146</sup> Inserted from 10 May 2013

<sup>147</sup> WEF Presidential assent

filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be under this sub-section.

- (7) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, **the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944** (1 of 1944)<sup>148</sup>.

**SECTION 87. Recovery of any amount due to Central Government<sup>149</sup>. —**

Where any amount payable by a person to the credit of the Central Government under any of the provisions of this Chapter or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below :—

- (a) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs;
- (b) (i) the Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that

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<sup>148</sup> Provisions pertaining to stay etc as applicable to Central Excise etc are made applicable to Service Tax vide this Section 86 (7)

<sup>149</sup> Unless VCES application is considered and decided, proceedings under Section 87 for recovery should not be initiated. The object of the VCES may be defeated, if the recovery is allowed to proceed – K Anand Caterers 2013-TIOL-741-HC-ALL-ST

CBEC Circular No. 967/01/2013: The provisions contained in the circular dated 1 January 2013 mandating the initiation of recovery proceedings thirty days after the filing of an appeal, if no stay is granted, cannot be applied to an assessee who has filed an application for stay, which has remained pending for reasons beyond the control of the assessee- Patel Engineering Limited [2013-TIOL-150-HC-MUM-ST](#)

amount;

(ii) every person to whom a notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow<sup>150</sup>;

(c) the Central Excise Officer may, on an authorisation by the Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

<sup>151</sup>Provided that where the person (hereinafter referred to as predecessor) from whom the service tax or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, in the custody or possession of the person so succeeding may also be

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<sup>150</sup> **Recovery proceedings under Section 87(b )( iii)** by directing the banks not to allow withdrawal / transfer - Section 87 applies only after a proceeding under Section 73 is concluded by an order determining the amount due and payable by the petitioner - Such a situation having not arisen as there is no conclusion of the proceeding, Section 87 is inapplicable - Impugned communications to the banks are quashed - GSP Infratech Development Ltd [2013-TIOL-399-HC-KAR-ST](#)

<sup>151</sup> WEF Presidential assent

attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining the written approval of the Commissioner of Central Excise, for the purposes of recovering such service tax or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.

(d) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

**SECTION 88. Liability under Act to be first charge.** — Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of tax<sup>152</sup>, penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 (1 of 1956) and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of 2002), be the first charge on the property of the assessee or the person as the case may be.

**SECTION 89. Offences and penalties.** —

(1) Whoever commits any of the following offences, namely :—

- (a)<sup>153</sup> knowingly evades the payment of service tax under this Chapter; or
- (b) avails and utilises 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
- (c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true)

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<sup>152</sup> With effect from 28 May 2012

<sup>153</sup> With effect from 28 May 2012

supplies false information; or

- (d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, shall be punishable,—

<sup>154</sup>(i) in the case of an offence specified in clauses (a), (b) or (c) where the amount **exceeds two hundred lakh rupees<sup>155</sup>~~fifty lakh rupees~~**, with imprisonment for a term which may extend to three years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

(ii) in the case of the offence specified in clause (d), where the amount **exceeds two hundred lakh rupees<sup>156</sup>~~fifty lakh rupees~~**, with imprisonment for a term which may extend to seven years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months

(iii) in the case of any other offences, with imprisonment for a term, which may extend to one year

(2) If any person is convicted of an offence punishable under—

(a) clause (i) or clause (iii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to three years;

(b) clause (ii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to seven years.

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<sup>154</sup> Substituted from 10 May 2013

<sup>155</sup> [Substituted by Finance Bill, 2016 w.e.f enactment of Finance Bill, 2016](#)

<sup>156</sup> [Substituted by Finance Bill, 2016 w.e.f enactment of Finance Bill, 2016](#)

~~(i) in the case of an offence where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years :-~~

~~**Provided** that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;~~

~~(ii) in any other case, with imprisonment for a term, which may extend to one year.~~

~~(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to three years :-~~

~~**Provided** that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term less than six months.~~

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely :—

- (i) the fact that the accused has been convicted for the first time for an offence under this Chapter;
- (ii) the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;
- (iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;
- (iv) the age of the accused.

(4) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.

**15790.** (1) An offence under clause (ii) of sub-section (1) of section 89 shall be **cognizable**.

~~(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,~~

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<sup>157</sup> Applicable from 10 May 2013



~~all offences, except the offences specified in sub-section (1), shall be **non-cognizable and bailable**~~<sup>158</sup>.

**91.** (1) If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified in ~~clause (i)~~<sup>159</sup> or **clause (ii)** of sub-section (1) of section 89, 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.

(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**~~<sup>160</sup><sup>161</sup>.

<sup>158</sup> Deleted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016

<sup>159</sup> Deleted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016

<sup>160</sup> ~~**Section 436 of Code of Criminal Procedure, 1973: In what cases bail to be taken.**~~

~~(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided: Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 or section 446A.~~

~~(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.~~

<sup>161</sup> Deleted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016

(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.

**SECTIONS 90 to 92** \* \* \* \*

**SECTION 93. Power to grant exemption from service tax. —**

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order.

**SECTION 93A. Power to grant rebate. —** Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or processing or removal or export of such goods<sup>162</sup> or for providing any taxable services and such rebate shall be subject to such extent and manner as may be [prescribed or specified by notification in the Official Gazette](#)<sup>163</sup>~~prescribed~~ :

**Provided** that where any rebate has been allowed on any goods or services under this section and the sale proceeds in respect of such goods or consideration in respect of such services are not received by or on behalf of the exporter in India within the time allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), such rebate shall except under such circumstances or conditions as may be prescribed, be deemed never to have been allowed and the Central Government may recover or adjust the amount of such rebate in such manner as may be prescribed.

<sup>162</sup> With effect from 28 May 2012

<sup>163</sup> [Substituted by Finance Bill, 2016 w.e.f. enactment of Finance Bill, 2016](#)

93B<sup>164</sup> **Rules made under section 94 to be applicable to services other than taxable services.** All rules made under section 94 and applicable to the taxable services shall also be applicable to any other service in so far as they are relevant to the determination of any tax liability, refund, credit of service tax or duties paid on inputs and input services or for carrying out the provisions of Chapter V of the Finance Act, 1994 (32 of 1994.).

**SECTION 94. Power to make rules. —**

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-
  - (a) collection and recovery of service tax under sections 66 and 68;
  - (aa) Determination of the amount and value of taxable service, the manner thereof, and the circumstances and conditions under which an amount shall not be a consideration, under section 67 <sup>165</sup>
  - (b) the time and manner and the form in which application for registration shall be made under sub-sections (1) and (2) of section 69
  - (c) the form, manner and frequency of the returns to be furnished under sub-sections (1) and (2) and the late fee for delayed furnishing of return under sub-section (1) of section 70
  - (cc) the manner of provisional attachment of property under sub-section (1) of section 73C;
  - (ccc) publication of name of any person and particulars relating to any proceeding under sub-section (1) of section 73D;
  - (d) the form in which appeal under section 85 or under sub-section (6) of section 86 may be filed and the manner in which they may be verified;
  - (e) the manner in which the memorandum of cross objections under sub-section (4) of section 86 may be verified;
    - (eee) the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable

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<sup>164</sup> Inserted With effect from 28 May 2012

<sup>165</sup> Substituted by Finance Act, 2015 w.e.f 14.05.2015

- service;
- (eeee) the manner of recovery of any amount due to the Central Government under section 87;
  - (f) provisions for determining export of taxable services;
  - (g) grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;
  - (h) rebate of service tax paid or payable on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India;
  - (hh) rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India under section 93A;
  - (hhh) the date for determination of rate of service tax and the place of provision of taxable service under section 66C;
  - (i) provide for the amount to be paid for compounding and the manner of compounding of offences<sup>166</sup>;
  - (j) provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in Chapter V of the Central Excise Act, 1944 (1 of 1944.) as made applicable to service tax vide section 83<sup>167</sup>;
  - (k) imposition, on persons liable to pay service tax, for the proper levy and collection of the tax, of duty of furnishing information, keeping records and the manner in which such records shall be verified;
  - (l) make provisions for withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of CENVAT credit) on provider of taxable service or exporter, for dealing with evasion of tax or misuse of CENVAT credit;
  - (m) authorisation of the Central Board of Excise and Customs or Chief Commissioners of Central Excise to issue instructions, for any incidental or supplemental matters for the implementation of the provisions of this Act;
  - (n) any other matter which by this Chapter is to be or may be prescribed<sup>168</sup>

(3) The power to make rules conferred by this section shall on the first occasion

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<sup>166</sup> With effect from 28 May 2012

<sup>167</sup> With effect from 28 May 2012

<sup>168</sup> WEF Presidential assent

of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Chapter come into force.

- (4) Every rule made under this Chapter, Scheme framed under section 71 and every notification issued under section 93 shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

**SECTION 95. Power to remove difficulties. —**

(1) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2002, the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, remove the difficulty :

**Provided** that no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Finance Act, 2002 incorporating such taxable services in this Chapter come into force.

(1A) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2003, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

**Provided** that no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Finance Act, 2003 incorporating such taxable services in this Chapter come into force.

(1B) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance (No. 2) Act, 2004, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

**Provided** that no such order shall be made after the expiry of a period of two years from the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President.

(1C) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2006 (21 of 2006), the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2006 receives the assent of the President.

(1D) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2007, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2007 receives the assent of the President.

(1E) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2008, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2008 receives the assent of the President.

(1F) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance (No. 2) Act, 2009, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance (No. 2) Bill, 2009 receives the assent of the President.

(1G) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2010, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2010 receives the assent of the President.

(1H) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2011, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2011 receives the assent of the President.;

(1-I)<sup>169</sup>. If any difficulty arises in giving effect to section 143 of the Finance Act, 2012, in so far as it relates to insertion of sections 65B, 66B, 66C, 66D, 66E and

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<sup>169</sup> With effect from 28 May 2012

section 66F in Chapter V of the Finance Act, 1994 (32 of 1994.), the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, make such provisions, as may be necessary or expedient for the purpose of removing the difficulty from such date, which shall include the power to give retrospective effect from a date not earlier than the date of coming into force of the Finance Act, 2012:

Provided that no such order shall be made after the expiry of a period of two years from the date of coming into force of these provisions.

<sup>170</sup>(1J) If any difficulty arises in giving effect to section 93 of the Finance Act, 2013, in so far as it relates to amendments made by the Finance Act, 2013 in Chapter V of the Finance Act, 1994, the Central Government may, by an order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2013 receives the assent of the President

(1K) If any difficulty arises in giving effect to section 106 of the Finance (No. 2) Act, 2014, in so far as it relates to amendments made by the said Act, in this Chapter, the Central Government may, by an order, published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance (No. 2) Bill, 2014 receives the assent of the President<sup>171</sup>.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the Parliament.

**SECTION 96. Consequential amendment.** — In the Economic Offences

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<sup>170</sup> Applicable from 10 May 2013

<sup>171</sup> WEF Presidential assent



(Inapplicability of Limitation) Act, 1974 (12 of 1974), in the Schedule, after entry 7 relating to the Central Excise Act, 1944 (1 of 1944), the following entry shall be inserted, namely :-

“7A. Chapter V of the Finance Act, 1994.”

## CHAPTER VA

### ADVANCE RULINGS

**SECTION 96A. Definitions.** — In this Chapter, unless the context otherwise requires,-

- (a) “advance ruling” means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a service proposed to be provided, by the applicant;
- (b) “applicant” means —
- (i)
- (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
  - (b) a resident setting up a joint venture in India in collaboration with a non-resident; or
  - (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India;
- (ii) a joint venture in India; or
- (iii) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 96C<sup>172</sup>;

**Explanation.** — For the purposes of this clause, “joint venture in India” means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement;

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<sup>172</sup> Vide Not. No.4/2013-ST Central Government has specified “**resident public limited Company**” as class of persons for this clause

- (c) "application" means an application made to the Authority under sub-section (1) of section 96C;
- (d) "Authority" means the Authority for Advance Rulings, constituted under sub-section (1), or authorised by the Central Government under sub-section (2A), of section 28F of the Customs Act, 1962 (52 of 1962).
- (e) "non-resident", "Indian company" and "foreign company" have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961 (43 of 1961);
- (f) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall apply, so far as may be, in relation to service tax as they apply in relation to duty of excise.

**SECTION 96B. Vacancies, etc., not to invalidate proceedings.** — No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

**SECTION 96C. Application for advance ruling.** —

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.
- (2) The question on which the advance ruling is sought shall be in respect of, -
  - (a) classification of any service as a taxable service under Chapter V;
  - (b) the valuation of taxable services for charging service tax;
  - (c) the principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter V;
  - (d) applicability of notifications issued under Chapter V;
  - (e) admissibility of credit of duty or tax in terms of the rules made in this regard<sup>173</sup>;
  - (f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.
- (3) The application shall be made in quadruplicate and be accompanied by a

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<sup>173</sup> With effect from 28 May 2012

fee of two thousand five hundred rupees.

(4) An applicant may withdraw an application within thirty days from the date of the application.

**SECTION 96D. Procedure on receipt of application.** — (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records :

**Provided** that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Central Excise.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application :

**Provided** that the Authority shall not allow the application where the question raised in the application is, -

- (a) already pending in the applicant's case before any Central Excise Officer, the Appellate Tribunal or any Court;
- (b) the same as in a matter already decided by the Appellate Tribunal or any Court :

**Provided** further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard :

**Provided** also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Central Excise.

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

**Explanation.** - For the purposes of this sub-section, "authorised representative" has the meaning assigned to it in sub-section (2) of section 35Q of the Central Excise Act, 1944 (1 of 1944).

(6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Central Excise, as soon as may be, after such pronouncement.

**SECTION 96E. Applicability of advance ruling. —**

(1) The advance ruling pronounced by the Authority under section 96D shall be binding only -

- (a) on the applicant who had sought it;
- (b) in respect of any matter referred to in sub-section (2) of section 96C;
- (c) on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

**SECTION 96F. Advance ruling to be void in certain circumstances. —**

(1) Where the Authority finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub-section (4) of section 96D has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Chapter shall apply (after excluding the period beginning with the date of such advance ruling and ending

with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Central Excise.

**SECTION 96G. Powers of Authority.** — (1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

**SECTION 96H. Procedure of Authority.** — The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

**SECTION 96-I. Power of Central Government to make rules.** — (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

- (a) the form and manner for making application under sub-section (1) of section 96C;
- (b) the manner of certifying a copy of advance ruling pronounced by the Authority under sub-section (7) of section 96D;
- (c) any other matter which, by this Chapter, is to be or may be prescribed.

(3) Every rule made under this Chapter shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more

successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule..

**SECTION 96J. Special exemption from service tax in certain cases. —**

(1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of membership fee collected by a club or association formed for representing industry or commerce, during the period on and from the 16th day of June, 2005 to the 31st day of March, 2008 (both days inclusive).

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected if sub-section (1) had been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2011 receives the assent of the President..

**97<sup>174</sup> Special provision for exemption in certain cases relating to management, etc., of roads.** (1) Notwithstanding anything contained in

section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of roads, during the period on and from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive).

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from

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<sup>174</sup> With effect from 28 May 2012

the date on which the Finance Bill, 2012 receives the assent of the President.

**98<sup>175</sup> Special provision for exemption in certain cases relating to management, etc., of noncommercial Government buildings.**

- (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of non-commercial Government buildings, during the period on and from the 16th day of June, 2005 till the date on which section 66B comes into force.
- (2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.
- (3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.

- <sup>176</sup>**99(1)** Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, no service tax shall be levied or collected in respect of taxable services provided by the Indian Railways during the period prior to 1st day of October, 2012,
- (2) No refund shall be made of service tax paid in respect of taxable services provided by the Indian Railways during the said period prior to 1st day of October, 2012,

100. Notwithstanding anything contained in section 66 as it stood prior to the 1st day of July, 2012, no service tax shall be levied or collected in respect of taxable services provided by the Employees' State Insurance Corporation set up under the Employees' State Insurance Act, 1948, during the period prior to the 1st day of July, 2012<sup>177</sup>.

[178](#)101. (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of July, 2012 and ending with the 29th day of January, 2014 (both days inclusive) in respect of

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<sup>175</sup> With effect from 28 May 2012

<sup>176</sup> Applicable from 10 May 2013

<sup>177</sup> WEF Presidential assent

<sup>178</sup> [Inserted by Finance Bill, 2016](#)

taxable services provided to an authority or a board or any other body-

(i) set up by an Act of Parliament or a State Legislature; or  
(ii) established by the Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation works.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

102. (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable 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 structure meant predominantly for use as-

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract



entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had subsection (1) been in force at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

103. (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of services provided by way of construction, erection, commissioning or installation of original works pertaining to an airport or port, under a contract which had been entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date, subject to the condition that Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India certifies that the contract had been entered into before the 1st day of March, 2015.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had subsection (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

## 4. APPLICABLE CENTRAL EXCISE PROVISIONS

**SECTION 83 of the Finance Act, 1994. Application of certain provisions of Act 1 of 1944.** — The provisions of the following sections of the Central Excise Act, 1944 (10 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise : sub-section (2A) of section 5A<sup>179</sup>, Subsection (2) of section] <sup>180</sup> 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, [15A, 15B]<sup>181</sup>, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F<sup>182</sup>, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D 38A and 40

*CENTRAL EXCISE ACT, 1944 – Provisions of Central Excise Act are highlighted in green colour for ease of reference<sup>183</sup>*

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**SECTION 9A. Certain offences to be non-cognizable.** — ~~(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under section 9 shall be deemed to be non-cognizable within the meaning of that Code<sup>184</sup>~~

<sup>185</sup>(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under section 9, except the offences referred to in sub-section (1A), shall be non-cognizable within the meaning of that Code.

(1A) The offences relating to excisable goods where the duty leviable thereon under this Act exceeds fifty lakh rupees and punishable under clause (b) or clause (bbbb) of sub-section (1) of section 9, shall be cognizable and non-bailable.

(2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such manner of compounding as may be prescribed :

**Provided** that nothing contained in this sub-section shall apply to —

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<sup>179</sup> WEF Presidential assent

<sup>180</sup> Inserted from 10 May 2013

<sup>181</sup> WEF Presidential assent

<sup>182</sup> With effect from 28 May 2012

<sup>183</sup> Reader may also refer Section 86 (7) of Finance Act, 1994 vide which provisions pertaining to stay etc as applicable to Central Excise etc are made applicable to Service Tax

<sup>184</sup> Applicable from 10 May 2013

<sup>185</sup> Applicable from 10 May 2013

(a) a person who has been allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of sub-section (1) of section 9;

(b) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

(c) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(d) a person who has been convicted by the court under this Act on or after the 30th day of December, 2005.

**SECTION 9AA. Offences by companies.** — (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

**Provided** that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation.** — For the purposes of this section, -

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

**SECTION 9B. Power of Court to publish name, place of business, etc., of persons convicted under the Act.** — (1) Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.

**SECTION 9C. Presumption of culpable mental state.** — (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

**Explanation.** — In this section, “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

**SECTION 9D. Relevancy of statements under certain circumstances.** —

(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

**SECTION 9E. Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958.** — (1) Nothing contained in section 562 of the Code of Criminal Procedure, 1898 (5 of 1898), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

(2) The provisions of sub-section (1) shall have effect notwithstanding anything contained in sub-section (3) of section 9.

**SECTION 11B. Claim for refund of duty and interest, if any, paid on such duty.** — (1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

**Provided** that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :

**Provided** further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

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(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :

**Provided** that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

- (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (b) unspent advance deposits lying in balance in the applicant's account current maintained with the Commissioner of Central Excise;
- (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

**Provided** further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.

**Explanation.** — For the purposes of this section, -

(A) “refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) “relevant date” means, -

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, -

- (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or
- (ii) if the goods are exported by land, the date on which such goods pass the frontier, or
- (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- (b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;
- (c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;
- (d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;
- (e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;
- (ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 5A, the date of issue of such order;
- (eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;
- (ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;
- (f) in any other case, the date of payment of duty.

**SECTION 11BB. Interest on delayed refunds.** — If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three

months from the date of receipt of such application till the date of refund of such duty :

**Provided** that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

**Explanation.** - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal , National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section.

**SECTION 11C. Power not to recover duty of excise not levied or short-levied as a result of general practice.** — (1) Notwithstanding anything contained in this Act, if the Central Government is satisfied -

(a) that a practice was, or is, generally prevalent regarding levy of duty of excise (including non-levy thereof) on any excisable goods; and

(b) that such goods were, or are, liable -

(i) to duty of excise, in cases where according to the said practice the duty was not, or is not being, levied, or

(ii) to a higher amount of duty of excise than what was, or is being, levied, according to the said practice,

then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty of excise payable on such goods, or as the case may be, the duty of excise in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.

(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty of excise paid on such goods or, as the case may be, the duty of excise paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 11B :

**Provided** that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, in the form referred to in sub-section (1) of section 11B, before the expiry of six months from the date of issue of the said notification.



**SECTION 12. Application of the provisions of Act No. 52 of 1962 to Central Excise Duties.** — The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the Customs Act, 1962 (52 of 1962), relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3 and section 3A.

**SECTION 12A. Price of goods to indicate the amount of duty paid thereon.** — Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty of excise on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

**SECTION 12B. Presumption that the incidence of duty has been passed on to the buyer.** — Every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.

**SECTION 12C. Consumer Welfare Fund.** — (1) There shall be established by the Central Government a fund, to be called the Consumer Welfare Fund.

(2) There shall be credited to the Fund, in such manner as may be prescribed, -

- (a) the amount of duty of excise referred to in sub-section (2) of section 11B or sub-section (2) of section 11C or sub-section (2) of section 11D;
- (b) the amount of duty of customs referred to in sub-section (2) of section 27 or sub-section (2) of section 28A, or sub-section (2) of section 28B of the Customs Act, 1962 (52 of 1962);
- (c) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund.
- (d) the surplus amount referred to in sub-section (6) of section 73A of the Finance Act, 1994 (32 of 1994).

**SECTION 12D. Utilisation of the Fund.** — (1) Any money credited to the Fund shall be utilised by the Central Government for the welfare of the consumers in accordance with such rules as that Government may make in this behalf.

(2) The Central Government shall maintain or, if it thinks fit, specify the authority which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

**SECTION 12E. Powers of Central Excise Officers.** — (1) A Central Excise Officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other Central Excise Officer who is subordinate to him.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner of Central Excise (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in section 14 or Chapter VIA.

**SECTION 14. Power to summon persons to give evidence and produce documents in inquiries under this Act.** — (1) Any Central Excise Officer duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required :

Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860 (45 of 1860).

**SECTION 15. Officers required to assist Central Excise Officers.** — All officers of Police and Customs and all officers of Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the Central Excise Officers in the execution of this Act.

<sup>186</sup>15A. (1) Any person, being—

- (a) an assessee; or
- (b) a local authority or other public body or association; or
- (c) any authority of the State Government responsible for the collection of value added tax or sales tax; or

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- (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or
- (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or
- (f) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or
- (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
- (h) a Registrar within the meaning of the Companies Act, 2013; or
- (i) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; or
- (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
- (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or
- (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
- (m) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934,

who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details or transaction of goods or services or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property, under any law for the time being in force, **shall furnish an information return** of the same in respect of such periods, within such time, form (including electronic form) and manner, to such authority or agency as may be prescribed.

- (2) Where the prescribed authority considers that the information submitted in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed authority may allow and if the defect is not rectified within the said period of thirty days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other

provision of this Act, such information return shall be treated as not submitted and the provisions of this Act shall apply.

- (3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the prescribed authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

**18715B.** If a person who is required to furnish an information return under section 15A fails to do so within the period specified in the notice issued under sub-section (3) thereof, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such return continues.

## SETTLEMENT OF CASES

**SECTION 31. Definitions.** — In this Chapter, unless the context otherwise requires, —

(a) “assessee” means any person who is liable for payment of excise duty assessed under this Act or any other Act and includes any producer or manufacturer of excisable goods or a registered person under the rules made under this Act, of a private warehouse in which excisable goods are stored;

(b) “Bench” means a Bench of the Settlement Commission;

(c) “case” means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made :

**Provided** that when any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause;

(d) “Chairman” means the Chairman of the Settlement Commission;

(e) “Commissioner (Investigation)” means an officer of the Customs or a Central Excise Officer appointed as such Commissioner to conduct inquiry or investigation for the purposes of this Chapter;

(f) "Member" means a Member of the Settlement Commission and includes the Chairman and the Vice-Chairman;

(g) "Settlement Commission" means the Customs, Central Excise and Service Tax<sup>188</sup> Settlement Commission constituted under section 32; and

(h) "Vice-Chairman" means a Vice-Chairman of the Settlement Commission.

**SECTION 32. Customs and Central Excise Settlement Commission.** — (1) The Central Government shall, by notification in the Official Gazette, constitute a Commission to be called the Customs, Central Excise and Service Tax Settlement Commission for the settlement of cases under this Chapter and Chapter XIVA of the Customs Act, 1962 (52 of 1962).

(2) The Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other Members as the Central Government thinks fit and shall function within the Department of the Central Government dealing with Customs and Central Excise matters.

(3) The Chairman, Vice-Chairman and other Members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of customs and central excise laws :

**Provided** that, where a member of the Board is appointed as the Chairman, Vice-Chairman or as a Member of the Settlement Commission, he shall cease to be a member of the said Board.

**SECTION 32A. Jurisdiction and powers of Settlement Commission.** —

(1) Subject to the other provisions of this Chapter, the jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof.

(2) Subject to the other provisions of this section, a Bench shall be presided over by the Chairman or a Vice-Chairman and shall consist of two other Members.

(3) The Bench for which the Chairman is the presiding officer shall be the principal Bench and other Benches shall be known as additional Benches.

(4) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, other Member of another Bench.

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(5) The principal Bench shall sit at Delhi and the Central Government shall, by notification in the Official Gazette, establish additional Benches at such places as it considers necessary.

(6) Notwithstanding anything contained in the foregoing provisions of this section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person be the presiding officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the presiding officer or in the office of one or the other Members of the Bench, the remaining Members may function as the Bench and if the presiding officer of the Bench is not one of the remaining Members, the senior among the remaining Members shall act as the presiding officer of the Bench :

**Provided** that if at any stage of the hearing of any such case or matter, it appears to the presiding officer that the case or matter is of such a nature that it ought to be heard of by a Bench consisting of three Members, the case or matter may be referred by the presiding officer of such Bench to the Chairman for transfer to such Bench as the Chairman may deem fit.

**Provided** further that at any stage of the hearing of any such case or matter, referred to in the first proviso, the Chairman may, if he thinks that the case or matter is of such a nature that it ought to be heard by a Bench consisting of three Members, constitute such Bench and if Vice-Chairman is not one of the Members, the senior among the Members shall act as the presiding officer of such Bench.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the Chairman may, for the disposal of any particular case, constitute a special Bench consisting of more than three Members.

(8) Subject to the other provisions of this Chapter, the special Bench shall sit at a place to be fixed by the Chairman.

**SECTION 32B. Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances.** — (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Chapter to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen as the Central Government may, by notification in the

Official Gazette, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

**SECTION 32C. Power of Chairman to transfer cases from one Bench to another.** — On the application of the assessee or the Chief Commissioner or Commissioner of Central Excise and after giving notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to another Bench.

**SECTION 32D. Decision to be by majority.** — If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the majority of the Members of the Settlement Commission who have heard the case, including those who first heard it.

**SECTION 32E. Application for settlement of cases.** — (1) An assessee may, in respect of a case relating to him, make an application, before adjudication, to the Settlement Commission to have the case settled, in such form and in such manner as may be prescribed and containing a full and true disclosure of his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him and such other particulars as may be prescribed including the particulars of such excisable goods in respect of which he admits short levy on account of misclassification, under-valuation, inapplicability of exemption notification or Cenvat credit or otherwise and any such application shall be disposed of in the manner hereinafter provided :

**Provided** that no such application shall be made unless, —

- (a) the applicant has filed returns showing production, clearance and Central excise duty paid in the prescribed manner;
- (b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;
- (c) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(d) the applicant has paid the additional amount of excise duty accepted by him along with interest due under section [11AA :

Provided further that the Settlement Commission, if it is satisfied that the circumstances exist for not filing the returns referred to in clause (a) of the first proviso to sub-section (1), may after recording the reasons therefor, allow the applicant to make such application:

Provided also that]<sup>189</sup> no application shall be entertained by the Settlement Commission under this sub-section in cases which are pending with the Appellate Tribunal or any court :

**Provided** also that no application under this sub-section shall be made for the interpretation of the classification of excisable goods under the Central Excise Tariff Act, 1985 (5 of 1986).

(1A) Notwithstanding anything contained in sub-section (1), where an application was made under sub-section (1), before the 1st day of June, 2007 but an order under sub-section (1) of section 32F has not been made before the said date or payment of amount so ordered by the Settlement Commission under sub-section (1) of section 32F has not been made, the applicant shall within a period of thirty days from the 1st day of June, 2007, pay the accepted duty liability failing which his application shall be liable to be rejected.

(3) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(4) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

#### **SECTION 32F. Procedure on receipt of an application under section 32E.**

— (1) On receipt of an application under sub-section (1) of section 32E, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with, and after taking into consideration the explanation provided by the applicant, the Settlement Commission, shall, within a period of fourteen days from the date of the notice, by an order, allow the application to be proceeded with, or reject the application as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection :

**Provided** that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2) A copy of every order under sub-section (1), shall be sent to the applicant and to the Commissioner of Central Excise having jurisdiction.

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<sup>189</sup> WEF Presidential assent



(3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within seven days from the date of order under sub-section (1), call for a report along with the relevant records from the Commissioner of Central Excise having jurisdiction and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission :

**Provided** that where the Commissioner does not furnish the report within the aforesaid period of thirty days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(4) Where a report of the Commissioner called for under sub-section (3) has been furnished within the period specified in that sub-section, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, for reasons to be recorded in writing, the Commissioner (Investigation) within fifteen days of the receipt of the report, to make or cause to be made such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of the communication from the Settlement Commission, on the matters covered by the application and any other matter relating to the case :

**Provided** that where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

(5) After examination of the records and the report of the Commissioner of Central Excise received under sub-section (3), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (4), and after giving an opportunity to the applicant and to the Commissioner of Central Excise having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) under sub-section (3) or sub-section (4).

(6) An order under sub-section (5) shall not be passed in respect of an application filed on or before the 31st day of May, 2007, later than the 29th day of February, 2008 and in respect of an application made on or after the 1st day of June, 2007, after nine months from the last day of the month in which the application was made, failing which the settlement proceedings shall abate, and the adjudicating authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

**Provided** that the period specified under this sub-section may, for reasons to be recorded in writing, be extended by the Settlement Commission for a further period not exceeding three months.

(7) Subject to the provisions of section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5) and, in relation to the passing of such order, the provisions of section 32D shall apply.

(8) The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case of rejection contain the reasons therefor and it shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts :

**Provided** that the amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 32E.

(9) Where any duty, interest, fine and penalty payable in pursuance of an order under sub-section (5) is not paid by the assessee within thirty days of receipt of a copy of the order by him, the amount which remains unpaid, shall be recovered along with interest due thereon, as the sums due to the Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.

(10) Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

**SECTION 32G. Power of Settlement Commission to order provisional attachment to protect revenue.** — (1) Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner as may be prescribed.

(2) Every provisional attachment made by the Settlement Commission under sub-section (1) shall cease to have effect from the date, the sums due to the Central Government for which such attachment is made are discharged by the applicant and evidence to that effect is submitted to the Settlement Commission.

**SECTION 32H. Power of Settlement Commission to reopen completed proceedings.** — If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 32E was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also :

**Provided** that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of five years from the date of application.

**Provided** further that no proceeding shall be reopened by the Settlement Commission under this section in a case where an application under section 32E is made on or after the 1st day of June, 2007.

**SECTION 32-I. Powers and procedure of Settlement Commission.** —

(1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in a Central Excise Officer under this Act or the rules made thereunder.

(2) Where an application made under section 32E has been allowed to be proceeded with under section 32F, the Settlement Commission shall, until an order is passed under sub-section (5) of section 32F, have, subject to the provisions of sub-section (4) of that section, exclusive jurisdiction to exercise the powers and perform the functions of any Central Excise Officer, under this Act in relation to the case.

(3) In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.

(4) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers, or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

**SECTION 32J. Inspection, etc., of reports.** — No person shall be entitled to inspect, or obtain copies of, any reports made by any Central Excise Officer to the Settlement Commission; but the Settlement Commission may, in its discretion furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee :

**Provided** that, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by such person, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

**SECTION 32K. Power of Settlement Commission to grant immunity from prosecution and penalty.** — (1) The Settlement Commission may, if it

is satisfied that any person who made the application for settlement under section 32E has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act and also either wholly or in part from the imposition of any penalty and fine under this Act, with respect to the case covered by the settlement :

**Provided** that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 32E.

**Explanation.** — For the removal of doubts, it is hereby declared that applications filed before the Settlement Commission on or before the 31st day of May, 2007 shall be disposed of as if the amendment in this section had not come into force.

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under sub-section (5) of section 32F within the time specified in such order or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(3) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particular material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

**SECTION 32L. Power of Settlement Commission to send a case back to the Central Excise Officer.** — (1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 32E has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the Central Excise Officer having jurisdiction who

shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

(2) For the purpose of sub-section (1), the Central Excise Officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such Central Excise Officer or held or recorded by him in the course of the proceedings before him.

(3) For the purposes of the time limit under section 11A and for the purposes of interest under section 11BB, in a case referred to in sub-section (1), the period commencing on and from the date of the application to the Settlement Commission under section 32E and ending with the date of receipt by the Central Excise Officer of the order of the Settlement Commission sending the case back to the Central Excise Officer shall be excluded.

**SECTION 32M. Order of settlement to be conclusive.** — Every order of settlement passed under sub-section (5) of section 32F shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

**SECTION 32N. Recovery of sums due under order of settlement.** — Any sum specified in an order of settlement passed under sub-section (5) of section 32F may, subject to such conditions if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered as sums due to the Central Government in accordance with the provisions under section 11 by the Central Excise Officer having jurisdiction over the person who made the application for settlement under section 32E.

**SECTION 32-O.** Bar on subsequent application for settlement in certain cases. — (1) Where, \* \* \* -

(i) an order of settlement passed under sub-section (7) of section 32F, as it stood immediately before the commencement of section 122 of the Finance Act, 2007 (22 of 2007) or sub-section (5) of section 32F, provides for the imposition of a penalty on the person who made the application under section 32E for settlement, on the ground of concealment of particulars of his duty liability; or

Explanation.— In this clause, the concealment of particulars of duty liability relates to any such concealment made from the Central Excise Officer<sup>190</sup>

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<sup>190</sup> WEF Presidential assent

(ii) after the passing of an order of settlement under the said sub-section (7), as it stood immediately before the commencement of section 122 of the Finance Act, 2007 (22 of 2007) or sub-section (5) of section 32F, in relation to a case, such person is convicted of any offence under this Act in relation to that case; or

(iii) the case of such person is sent back to the Central Excise Officer having jurisdiction by the Settlement Commission under section 32L,

then, he shall not be entitled to apply for settlement under section 32E in relation to any other matter.

(2) \* \* \*

**SECTION 32P. Proceedings before Settlement Commission to be judicial proceedings.** — Any proceedings under this Chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code (45 of 1860).

**SECTION 33A. Adjudication procedure.** — (1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing :

**Provided** that no such adjournment shall be granted more than three times to a party during the proceeding.

**SECTION 35EE. Revision by Central Government.** — (1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order :

**Provided** that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.

**Explanation.** — For the purposes of this sub-section, "order passed under section 35A" includes an order passed under that section before the commencement of section 47 of the Finance Act, 1984 against which an appeal has not been preferred before such commencement and could have been, if the

said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(1A) The Commissioner of Central Excise may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :

**Provided** that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of, -

(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is one lakh rupees or less;

(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is more than one lakh rupees :

**Provided** that no such fee shall be payable in the case of an application referred to in sub-section (1A).

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section, —

(a) in any case in which an order passed under section 35A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty

shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time-limit specified in section 11A.

**SECTION 34A. Confiscation or penalty not to interfere with other punishments.** — No confiscation made or penalty imposed under the provisions of the Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

**SECTION 35C. Orders of Appellate Tribunal.** — (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

[(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.].

(2) The Appellate Tribunal may, at any time within [six months] from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendments if the mistake is brought to its notice by the [Commissioner of Central Excise] or the other party to the appeal :

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the other party, shall not be made under this sub-section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

[(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed :

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<sup>191</sup> 7. *It requires to be noted there is no specific provision authorising grant of stay of realisation of the adjudicated liability. However the power to grant of stay pending the hearing of an appeal being an inherent power of an appellate forum/quasi judicial forum, such power is exercised as integral to the appellate jurisdiction. It is this exercise of the power to grant of stay that is the subject matter of the sunset clause in*



(3) The Appellate Tribunal shall send a copy of every order passed under this section to the [Commissioner of Central Excise] and the other party to the appeal.

(4) [Save as provided in section 35G or section 35L,] orders passed by the Appellate Tribunal on appeal shall be final.

**SECTION 35D. Procedure of Appellate Tribunal.** — (1) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962), shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962.

[(2) \* \* \*]

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where —

(a) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(b) the amount of fine or penalty involved, does not exceed [fifty lakh rupees].

<sup>193</sup>**35F.** The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,—

(i) under sub-section (1) of section 35, unless the appellant has deposited **seven and a half per cent.** of the **duty demanded or penalty imposed or both**, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Commissioner of Central Excise;

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited **seven and a half per cent.** of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited **ten per cent.** of the duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against:

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*the proviso to Sub Section (2A) of Section 35C. The sunset clause does not apply to grant of waiver of pre-deposit, an exercise conditioned by the provision of Section 35F.*

*On the aforesaid analysis, the orders of the Tribunal dated 20.9.2012 in the stay application in the two appeals, notwithstanding the observations that the grant of waiver shall operate during the pendency of the appeal, operate during the pendency of the appeals. - **SHYAM KUMAR AND CO PVT LTD 2014-TIOL-362-CESTAT-DEL***

<sup>192</sup> WEF Presidential assent

<sup>193</sup> WEF Presidential assent

Provided that the amount required to be deposited under this section shall not exceed rupees **ten crores**:

Provided further that the provisions of this section shall **not apply to** the stay applications and appeals **pending** before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

Explanation.— For the purposes of this section “duty demanded” shall include,—

- (i) amount determined under section 11D;
- (ii) amount of erroneous Cenvat credit taken;
- (iii) amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004.

**SECTION 35FF. Interest on delayed refund of amount deposited under the proviso to section 35F.** —

Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

**SECTION 35G. Appeal to High Court.** - (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be -

- (a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;
- (b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

**Provided** that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(8) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

**SECTION 35H. Application to High Court.** — (1) The Commissioner of Central Excise or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under section 35C passed before the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.

(2) The Commissioner of Central Excise or the other party applying to the High Court under sub-section (1) shall clearly state the question of law which he seeks to be referred to the High Court and shall also specify the paragraph in the order of the Appellate Tribunal relevant to the question sought to be referred.

(3) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may, notwithstanding that he may not have filed such application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in the prescribed manner against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the High Court as if it were an application presented within the time specified in sub-section (1).

(3A) The High Court may admit an application or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.

(4) If, on an application made under sub-section (1), the High Court directs the Appellate Tribunal to refer the question of law raised in the application, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such direction, draw up a statement of the case and refer it to the High Court.

**SECTION 35-I. Power of High Court or Supreme Court to require statement to be amended.** — If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

**SECTION 35J. Case before High Court to be heard by not less than two judges.** — (1) When any case has been referred to the High Court under section 35G or section 35H, it shall be heard by a Bench of not less than two judges of the High Court and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of

law upon which they differ and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

**SECTION 35K. Decision of High Court or Supreme Court on the case stated.**

— (1) The High Court or the Supreme Court hearing any such case shall decide the question of law raised therein and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgment.

(1A) Where the High Court delivers a judgment in an appeal filed before it under section 35G, effect shall be given to the order passed on the appeal by the concerned Central Excise Officer on the basis of a certified copy of the judgment.

(2) The costs of any reference to the High Court or an appeal to the High Court or the Supreme Court, as the case may be which shall not include the fee for making the reference, shall be in the discretion of the Court.

**SECTION 35L. Appeal to the Supreme Court** — (1) An appeal shall lie to the Supreme Court from —

(a) any judgment of the High Court delivered -

(i) in an appeal made under section 35G; or

(ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 35H,

in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or.

(b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

(2) For the purposes of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment.<sup>194</sup>

**SECTION 35M. Hearing before Supreme Court.** — (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the

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<sup>194</sup> WEF Presidential assent

Supreme Court shall, so far as may be, apply in the case of appeals under section 35L as they apply in the case of appeals from decrees of a High Court :

**Provided** that nothing in this sub-section shall be deemed to affect the provisions of sub-section (1) of section 35K or section 35N.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 35K in the case of a judgment of the High Court.

**SECTION 35N.** Sums due to be paid notwithstanding reference, etc. — Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, under this Act before the commencement of the National Tax Tribunal Act, 2005 sums due to the Government as a result of an order passed under sub-section (1) of section 35C shall be payable in accordance with the order so passed.

**SECTION 35-O. Exclusion of time taken for copy.** — In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

**SECTION 35Q. Appearance by authorised representative.** — (1) Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under this Act to appear personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this section, “authorised representative” means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

- (a) his relative or regular employee; or
- (b) any legal practitioner who is entitled to practise in any civil court in India; or
- (c) any person who has acquired such qualifications as the Central Government may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service — Group A and has retired or resigned from such Service after having served for not less than three years in any capacity in that Service, shall be entitled to appear as an

authorised representative in any proceedings before a Central Excise Officer for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person, —

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act, 1968 (45 of 1968); or

(c) who has become an insolvent,

shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to in clause (a), and for such time as the Commissioner of Central Excise or the competent authority under the Customs Act, 1962 or the Gold (Control) Act, 1968, as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person, —

(a) who is a legal practitioner, is found guilty of mis-conduct in his professional capacity by any authority entitled to institute proceedings against him, an order passed by that authority shall have effect in relation to his right to appear before a Central Excise Officer or the Appellate Tribunal as it has in relation to his right to practise as a legal practitioner;

(b) who is not a legal practitioner, is found guilty of mis-conduct in connection with any proceedings under this Act by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely :—

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

**SECTION 35R. Appeal not to be filed in certain cases.** — (1) The Central Board of Excise and Customs may, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal, application, revision or reference by the Central Excise Officer under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(4) The Commissioner (Appeals) or the Appellate Tribunal or court<sup>195</sup> hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

(5) Every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

**SECTION 36. Definitions.** — In this Chapter —

(a) “appointed day” means the date of coming into force of the amendments to this Act specified in Part II of the Fifth Schedule to the Finance (No. 2) Act, 1980;

(b) “High Court” means, —

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union Territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;

(iii) in relation to the Union Territories of Dadra and Nagar Haveli and Daman and Diu, the High Court at Bombay;

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<sup>195</sup> WEF Presidential assent



(iv) in relation to any other Union Territory, the highest court of civil appeal for that territory other than the Supreme Court of India;

(c) "President" means the President of the Appellate Tribunal.

## **CHAPTER VIB - PRESUMPTION AS TO DOCUMENTS**

**SECTION 36A. Presumption as to documents in certain cases.** — Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall, —

(a) unless the contrary is proved by such person, presume —

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

**SECTION 36B. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.** —

(1) Notwithstanding anything contained in any other law for the time being in force, —

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer print out"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the

original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely :—

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether —

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

**Explanation.** — For the purposes of this section, —

- (a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and
- (b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

**SECTION 37A. Delegation of powers.** - The Central Government may, by notification in the Official Gazette direct that subject to such conditions, if any, as may be specified in the notification —

(a) any power exercisable by the Board under this Act may be exercisable also by a Chief Commissioner of Central Excise or a Commissioner of Central Excise empowered in this behalf by the Central Government;

(b) any power exercisable by a Commissioner of Central Excise under this Act may be exercisable also by a Joint Commissioner of Central Excise or an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise empowered in this behalf by the Central Government;

(c) any power exercisable by a Joint Commissioner of Central Excise under this Act may be exercisable also by an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise empowered in this behalf by the Central Government; and

(d) any power exercisable by an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.

**SECTION 37B. Instructions to Central Excise Officers.** — The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on ~~such goods~~such goods or for the implementation of any provisions of this Act<sup>196</sup>, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board :

**Provided** that no such orders, instructions or directions shall be issued—

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

**SECTION 37C. Service of decisions, orders, summons, etc.** — (1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, -

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due or by **speed post** with proof of

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<sup>196</sup> To be inserted from date of enactment of Finance Bill, 2016

delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963<sup>197</sup>, to the person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or courier referred to in sub-section (1)<sup>198</sup> or a copy thereof is affixed in the manner provided in sub-section (1).

**SECTION 37D. Rounding off of duty, etc.** — The amount of duty, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of *paise* then, if such part is fifty *paise* or more, it shall be increased to one rupee and if such part is less than fifty *paise* it shall be ignored.

**SECTION 38A. Effect of amendments, etc., of rules, notifications or orders.** — Where any rule, notification or order made or issued under this Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not -

(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or

(b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or

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<sup>197</sup> Effective from 10 May 2013

<sup>198</sup> Effective from 10 May 2013

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

**SECTION 40. Protection of action taken under the Act.** — (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or a State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or any rule made thereunder.

(2) No proceeding, other than a suit, shall be commenced against the Central Government or any officer of the Central Government or a State Government for anything done or purported to have been done in pursuance of this Act or any rule made thereunder, without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof or after the expiration of three months from the accrual of such cause.

## 6. SERVICE TAX RULES, 1994

### **NOTIFICATION NO. 2/94 - ST, DATED JUNE 28, 1994, AS AMENDED**

In exercise of the powers conferred by sub-section (1), read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules for the purpose of the assessment and collection of service tax, namely: -

#### **1. SHORT TITLE AND COMMENCEMENT**

(1) These rules may be called the Service Tax Rules, 1994.

(2) They shall come into force on the 1st day of July, 1994.

#### **2. DEFINITIONS**

(1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Finance Act, 1994 (32 of 1994);

<sup>199</sup>(aa) "aggregator" means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator;

(b) "assessment" includes self-assessment of service tax by the assessee, reassessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil; determination of the interest on the tax assessed or reassessed;

"(bb) "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);

(bc) "body corporate" has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956 (1 of 1956);

(bca) <sup>200</sup>"brand name or trade name" means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection,

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<sup>199</sup> Inserted vide Not. No. 5/2015-ST w.e.f 01.03.2015

<sup>200</sup> Inserted vide Not. No. 5/2015-ST w.e.f 01.03.2015

in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person

(bd) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);"

(c) "Form" means a Form appended to these rules;

(c1a) goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(ca) "Half-year" means the period between 1st April to 30th September or 1st October-to 31st March of a financial year;

(cb) "input service distributor" has the meaning assigned to it in clause (m) of Rule 2 of the CENVAT Credit Rules, 2004;

"(cba) "insurance agent" has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938);"

(cc) "large taxpayer" has the meaning assigned to it in the Central Excise Rules, 2002.

`(cca)"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;

(ccb) "life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

(ccc) "non-banking financial company" has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(cd) "partnership firm" includes a limited liability partnership;.

(d) person liable for paying service tax, -

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

(A) in relation to service provided or agreed to be provided by an insurance agent to any person carrying on the insurance business, the recipient of the service.



(AA) in relation to service provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company, the recipient of the service;<sup>201</sup>

(AAA)<sup>202</sup> in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service: Provided that if the aggregator does not have a physical presence in the taxable territory, any person representing the aggregator for any purpose in the taxable territory shall be liable for paying service tax; Provided further that if the aggregator does not have a physical presence or does not have a representative for any purpose in the taxable territory, the aggregator shall appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax

(B) in relation to service 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,—

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) 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;

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

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

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

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

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

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<sup>201</sup> Inserted from 11 July 2014 vide Not. No. 9/2014-ST

<sup>202</sup> Inserted vide Not. No. 5/2015-ST w.e.f. 01.03.2015

Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

(C) in relation to service provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory, the recipient of such service;

(D) in relation to service provided or agreed to be provided by,-

(I) an arbitral tribunal, or

(II) a firm of advocates or an individual advocate other than a senior advocate by way of legal services<sup>203</sup>~~an individual advocate or a firm of advocates by way of legal services, to any business entity located in the taxable territory, the recipient of such service;~~

(E) in relation to<sup>204</sup> ~~support~~ services provided or agreed to be provided by Government or local authority except,-

(a) renting of immovable property, and

(b) services specified 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, the recipient of such service;

(EE) in relation to service provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate, the recipient of such service<sup>205</sup>

~~(EEA) in relation to service provided or agreed to be provided by a mutual fund agent or distributor to a mutual fund or asset management company, the recipient of the service<sup>206</sup>~~

(EEB) in relation to service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent, the recipient of the service<sup>207</sup>

<sup>203</sup> Substituted vide Notification No. 19/2016-ST w.e.f. 01.04.2016

<sup>204</sup> Deleted vide Not. No. 5/2015-ST read with Not. No. 17/2016-ST effective from 01.04.2016

<sup>205</sup> Substituted from 11 July 2014 vide Not. No. 9/2014-ST

<sup>206</sup> Deleted vide Notification No. 19/2016-ST w.e.f. 01.04.2016

- (F) in relation to services provided or agreed to be provided by way of :-
- (a) renting of a motor vehicle designed to carry passengers, to any person who is not engaged in a similar business; or
  - (b) supply of manpower for any purpose or security services<sup>208</sup>; or
  - (c) service portion in execution of a 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 a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.

- (G) in relation to any taxable service 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, the recipient of such service;

(ii) in a case other than sub-clause (i), means the provider of service.

(dd) "place of provision" shall be the place as determined by Place of Provision of Services Rules 2012;'

(f) "renting of immovable property" means any service provided or agreed to be provided by renting of immovable property or any other service in relation to such renting.

(fa) "security services" means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity<sup>209</sup>

(g) "supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.'

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<sup>207</sup> Inserted vide Not. No. 5/2015-ST w.e.f. 01.0.4.2015

<sup>208</sup> *Ibid*

<sup>209</sup> Not. No. 46/2012-ST dated 7 August 2012

(e) "quarter" means the period between 1st January to 31st March or 1st April to 30th June or 1st July to 30th September or 1st October to 31st December of a financial year.

(2) All words and expressions used but not defined in these rules but defined in the Central Excise Act, 1944 (1 of 1944), and the Rules made there under shall have the meanings assigned to them in that Act and rules.

### **3. APPOINTMENT OF OFFICERS**

The Central Board of Excise and Customs may appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Act within such local limits as it may assign to them as also specify the taxable service in relation to which any such Central Excise Officer shall exercise his powers.

### **4. REGISTRATION**

(1) Every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of thirty days from the date on which the service tax under section 66B of the Finance Act, 1994 (32 of 1994) is levied:

Provided that where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement:

Provided further that a person liable for paying the service tax in the case of taxable services referred to in sub-section (4) or sub-section (5) of section 66 of the Finance Act, 1994 (32 of 1994) may make an application for registration on or before the 31st day of December, 1998:

Provided also that a person liable for paying the service tax in the case of taxable services referred to in sub-clause (zzp) of clause (105) of section 65 of the Act may make an application for registration on or before the 31st day of March, 2005.

(2) Where a person, liable for paying service tax on a taxable service,

- (i) provides such service from more than one premises or offices; or
- (ii) receives such service in more than one premises or offices; or

(iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax, and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located<sup>210</sup>.

(3) The registration under sub-rule (2), shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located:

Provided that nothing contained in this sub-rule shall have any effect on the registration granted to the premises or offices having such centralised billing or centralised accounting systems, prior to the 2nd day of November, 2006.

(3A) Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.

(4) Where an assessee is providing more than one taxable service, he may make a single application, mentioning therein all the taxable services provided by him, to the concerned Superintendent of Central Excise.

(5) The Superintendent of Central Excise shall after due verification of the application form or an intimation under sub-rule (5A), as the case may be, grant a certificate of registration in Form ST-2 within seven days from the date of receipt of the application or the intimation. If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.

(5A) Where there is a change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or he intends to

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<sup>210</sup> Argument that respondent is a service receiver and hence is not eligible for centralized registration is meaningless and defeats the objective of registration [2013-TIOL-990-CESTAT-MUM](#)

furnish any additional information or detail, such change or information or details shall be intimated, in writing, by the assessee, to 112 Service Tax in India the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, within a period of thirty days of such change.

- (6) Where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.
- (7) Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately to the Superintendent of Central Excise.
- (8) On receipt of the certificate under sub-rule (7), the Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act, and the rules and the notifications issued thereunder, and thereupon cancel the registration certificate.
- (9) The registration granted under this rule shall be subject to such conditions, safeguards and procedure as may be specified by an order issued by the Board<sup>211</sup>

#### **4A. TAXABLE SERVICE TO BE PROVIDED OR CREDIT TO BE DISTRIBUTED ON INVOICE, BILL OR CHALLAN**

- (1) Every person providing taxable service, 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 service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorised by him in respect of such taxable service provided or agreed to be provided and such invoice, bill or, as the case may be, challan shall be **serially numbered** and shall contain the following, namely: -
  - (i) the name, address and the registration number of such person;
  - (ii) the name and address of the person receiving taxable service;
  - (iii) description and value of taxable service provided or agreed to be provided; and (iv) the service tax payable thereon:

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<sup>211</sup> Inserted vide Not. No. 5/2015-ST w.e.f. 01.0.4.2015

Provided that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company, providing service to any person, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule:

Provided further that in case the provider of taxable service is a goods transport agency, providing service to any person, in relation to transport of goods by road in a goods carriage, an invoice, a bill or, as the case may be, a challan shall include any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this sub-rule:

Provided also that in case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within thirty days of the date when each event specified in the contract, which requires the service receiver to make any payment to the service provider is completed:

Provided also that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company, providing service to any person, in relation to banking and other financial services, the period within which the invoice, bill or challan, as the case may be is to be issued, shall be forty five days

Provided also that in case the provider of taxable service is providing the service of transport of passenger, an invoice, a bill or as the case may be, challan shall include ticket in any form by whatever name called and whether or not containing registration number of the service provider, classification of the service received and address of the service receiver but containing other information in such documents as required under this sub-rule.

Provided also that wherever the provider of taxable service receives an amount upto rupees one thousand in excess of the amount indicated in the invoice and the provider of taxable service has opted to determine the point of taxation based on the option as given in Point of Taxation Rules, 2011, no invoice is required to be issued to such extent

(2) Every input service distributor distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorised by him, for each of the recipient of the credit distributed, and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely: -

(i) the name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or as the case may be, challan issued under sub-rule (1);

(ii) the name and address of the said input service distributor;

(iii) the name and address of the recipient of the credit distributed;

(iv) the amount of the credit distributed:

Provided that in case the input service distributor is an office of a banking company or a financial institution including a non-banking financial company, providing service to any person, , an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered but containing other information in such documents as required under this sub-rule.

#### **4B. ISSUE OF CONSIGNMENT NOTE**

Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the recipient of service:

Provided that where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.

Explanation. - For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of



origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

#### 4C. Authentication by digital signature-

- (1) Any invoice, bill or challan issued under rule 4A or consignment note issued under rule 4B may be authenticated by means of a digital signature
- (2) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by any person issuing digitally signed invoices

### **5. RECORDS**

- (1) The records including computerised data as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.
- (2) Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of
  - (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,
    - (a) providing of any service,;
    - (b) receipt or procurement of input services and payment for such input services;
    - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
    - (d) 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.
- (3) All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.
- (4) Records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature.

The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records  
Explanation – For the purposes of rule 4C and sub-rule (4) and (5) of this rule,-

(i) The expression “authenticate” shall have the same meaning as assigned in the Information Technology Act, 2000 (21 of 2000).

(ii) The expression “digital signature” shall have the meaning as defined in the Information Technology Act, 2000 (21 of 2000) and the expression “digitally signed” shall be construed accordingly<sup>212</sup>

### **<sup>213</sup>5A. ACCESS TO A REGISTERED PREMISES**

(1) An officer authorised by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every assessee shall, on demand, make available to the officer authorised under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be,-

(i) the records as mentioned in sub-rule (2) of rule 5;

(ii) trial balance or its equivalent; and

(iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961), for the scrutiny of the officer or audit party, as the case may be

## **6. PAYMENT OF SERVICE TAX**

(1) The service tax shall be paid to the credit of the Central Government,-

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<sup>212</sup> Inserted w.e.f 01.04.2015 vide Not. No. 5/2015-ST

<sup>213</sup> CAG has no power to audit records of a private assessee: there is no provision in Chapter V of the Finance Act, 1994 or for that matter in the CAG Act which empowers the CAG to audit the accounts of an assessee which is a nongovernment company, not in receipt of aid or assistance from any government or government entity- Since conflicting decision matter referred to Division Bench - SKP Securities Ltd Infinity Infotech Parks Ltd [2013-TIOL-38-HC-KOL-ST](#)

- (i) by the **6th day of the month**, if the duty is deposited electronically through internet banking; and
- (ii) by the **5th day of the month**, in any other case, immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard:

Provided that where the assessee is a one person company whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, or is an individual or proprietary firm or partnership firm or Hindu Undivided Family<sup>214</sup>~~assessee is an individual or proprietary firm or partnership firm~~, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the **quarter** in which the service is deemed to be provided as per the rules framed in this regard:

Provided further that the service tax on the service deemed to be provided in the month of **March**, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the **31st day of March** of the calendar year.

Provided also that

"in case of such individuals, partnership firms and one person companies whose<sup>215</sup>~~in case of individuals and partnership firms~~ whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the **previous financial year**, the service provider shall have the option to pay tax on taxable services provided or agreed to be to be provided by him up to a **total of rupees fifty lakhs** in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received

(1A) Without prejudice to the provisions contained in sub-rule (1), every person liable to pay service tax, may, on his own volition, pay an amount as service tax in advance, to the credit of the Central Government and adjust the

<sup>214</sup> [Substituted vide Notification No. 19/2016-ST w.e.f. 01.04.2016](#)

<sup>215</sup> [Substituted vide Notification No. 19/2016-ST w.e.f. 01.04.2016](#)

amount so paid against the service tax which he is liable to pay for the subsequent period:

Provided that the assessee shall,-

- (i) intimate the details of the amount of service tax paid in advance, to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such payment; and
  - (ii) indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70 of the Act.
- (2) Every assessee shall electronically pay the service tax payable by him, through internet banking:

Provided that the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction, may for reasons to be recorded in writing, allow the assessee to deposit the service tax by any mode other than internet banking.<sup>216</sup>

- (2A) For the purpose this rule, if the assessee deposits the service tax by cheque, the date of presentation of cheque to the bank designated by the Central Board of Excise and Customs for this purpose shall be deemed to be the date on which service tax has been paid subject to realization of that cheque.
- (3) 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 the contract, the assessee may take 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 had been issued.;

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<sup>216</sup> Substituted from 1 October 2014 vide Not. No. 9/2014-ST

(4) Where an assessee is, for any reason, **unable to correctly estimate**, on the date of deposit, the actual amount payable for any particular month or quarter, as the case may be, he may make a request in writing to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, giving reasons for payment of service tax on provisional basis and the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, on receipt of such request, may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him and the provisions of the [Central Excise Rules, 2002<sup>217</sup>](#)~~Central Excise (No. 2) Rules, 2001~~, relating to provisional assessment except so far as they relate to execution of bond, shall, so far as may be, apply to such assessment.

(4A) Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount **in excess** of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may **adjust** such excess amount paid by him against his service tax liability for the **succeeding month or quarter**, as the case may be.

(4B) The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the condition that the excess amount paid is on account of reasons **not involving interpretation of law, taxability, valuation or applicability of any exemption notification**.

(4C) Notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services of **renting of immovable property** has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid in terms of notification No. **29/2012-Service Tax**, dated the 20<sup>th</sup> June, 2012, from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within one year from the date of payment of such property tax and the details of such adjustment shall be

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<sup>217</sup> [Substituted vide Notification No. 19/2016-ST w.e.f. 01.04.2016](#)

intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment.”;

- (5) Where an assessee under sub-rule (4) requests for a **provisional assessment** he shall file a statement giving details of the difference between the service tax deposited and the service tax liable to be paid for each month in a memorandum in Form ST-3A accompanying the quarterly or half - yearly return, as the case may be.
- (6) Where the assessee submits a memorandum in **Form ST-3A** under sub-rule (5), it shall be lawful for the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, to complete the assessment, wherever he deems it necessary, after calling such further documents or records as he may consider necessary and proper in the circumstances of the case.

Explanation. - For the purposes of this rule and rule 7, “Form G.A.R.-7” means a memorandum or challan referred to in rule 26 of the Central Government Account (Receipts and Payments) Rules, 1983.

<sup>218</sup>(7) The person liable for paying the service tax in relation of booking of tickets for travel by air by an **air travel agent**, shall have the option, to pay an amount calculated at the rate of **0.7%** <sup>219</sup>**of the basic fare** in the case of domestic bookings, and at the rate of **1.4%**<sup>220</sup> **of the basic fare** in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of Chapter V of the Act and the option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

Explanation. - For the purposes of this sub-rule, the expression “basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

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<sup>218</sup> Deleted w.e.f 14.05.2015

<sup>219</sup> Amended vide Not. No. 5/2015-ST w.e.f. 01.06.2015

<sup>220</sup> Amended vide Not. No. 5/2015-ST w.e.f. 01.06.2015

(7A) **An insurer** carrying on **life insurance** business shall have the option to pay tax:

(i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

(ia) in case of single premium annuity policies other than (i) above, 1.4 per cent. of the single premium charged from the policy holder<sup>221</sup>

(ii) in all other cases, 3.5 per cent<sup>222</sup> of the premium charged from policy holder in the first year and 1.75 per cent.<sup>223</sup> of the premium charged from policy holder in the subsequent years:

towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of Chapter V of the said Act.

Provided that such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

(7B) The person liable to pay service tax in relation to **purchase or sale of foreign currency, including money changing**, shall have the option to pay an amount calculated at the following rate towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of Chapter V of the Act, namely:

(a) 0.14 per cent<sup>224</sup> of the gross amount of currency exchanged for an amount upto rupees 100,000, subject to the minimum amount of rupees 35<sup>225</sup>; and

(b) **rupees 140 and 0.07<sup>226</sup> percent.** of the gross amount of currency exchanged for an amount of rupees exceeding 100,000 and upto rupees 10,00,000; and

(c) **rupees 770 and 0.014<sup>227</sup> percent.** of the gross amount of currency exchanged for an amount of rupees exceeding 10,00,000, subject to **maximum amount of rupees 7000:**

<sup>221</sup> [Inserted vide Notification No. 19/2016-ST w.e.f. 01.04.2016](#)

<sup>222</sup> Amended vide Not. No. 5/2015-ST w.e.f. 01.06.2015

<sup>223</sup> Amended vide Not. No. 5/2015-ST w.e.f. 01.06.2015

<sup>224</sup> Amended vide Not. No. 5/2015-ST w.e.f. 01.06.2015

<sup>225</sup> Amended vide Not. No. 5/2015-ST w.e.f. 01.06.2015

<sup>226</sup> Amended vide Not. No. 5/2015-ST w.e.f. 01.06.2015

Provided that the person providing the service shall exercise such option for the financial year and such option shall not be withdrawn during the remaining part of that financial year.

(7C)The **distributor or selling agent**, liable to pay service tax for the taxable service of promotion, marketing, organising or in any other manner assisting in organising **lottery**, shall have the option to pay an amount at the rate specified in column (2) of the Table given below, subject to the conditions specified in the corresponding entry in column (3) of the said Table, instead of paying service tax at the rate specified in section 66B of Chapter V of the said Act:

Sl. No.	Rate	Condition
1	2	3
1	Rs 8200 on every Rs 10 lakh (or part of Rs 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2	Rs 12800 on every Rs 10 lakh (or part of Rs 10 lakh) of aggregate face value of lottery tickets printed by the organising State for a draw <sup>228</sup>	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%

Provided that in case of online lottery, the aggregate face value of lottery tickets for the purpose of this sub-rule shall be taken as the aggregate value of tickets sold, and service tax shall be calculated in the manner specified in the said Table.

Provided further that the distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

Provided also that the distributor or selling agent shall exercise such option for financial year 2010-11, within a period of one month of the publication of this sub-rule in the Official Gazette or, in the case of new service provider, within one month of providing of such service and such option shall not be withdrawn during the remaining part of that financial year.

<sup>227</sup> Amended vide Not. No. 5/2015-ST w.e.f. 01.06.2015

<sup>228</sup> Amended vide Not. No. 5/2015-ST w.e.f. 01.06.2015



Explanation.- For the purpose of this sub-rule-

<sup>229</sup>(ii) "draw" shall have the meaning assigned to it in clause (d) 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, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.

(iii) "**online lottery**" shall have the meaning assigned to it in clause (e) 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, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.

(iv) "organising state" shall have the meaning assigned to it in clause (f) 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, Part-II, Section 3, Sub-section (i) vide number G.S.R. 278(E) dated 1st April, 2010.

#### **6A. Export of services<sup>230</sup>.**-

(1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-

- (a) the provider of service is located in the taxable territory ,
- (b) the recipient of service is located outside India,
- (c) the service is not a service specified in the section 66D of the Act,
- (d) the place of provision of the service is outside India,
- (e) the payment for such service **has been received<sup>231</sup>** by the provider of service in convertible foreign exchange, and
- (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act

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<sup>229</sup> Deleted w,e,f 01.06.2015

<sup>230</sup> All the six conditions (i.e. a to f) should be cumulatively satisfied.

<sup>231</sup> Non-receipt of consideration within prescribed RBI time limit may attract provision of Rule 6 (refer Rule 6 (8) of CENVAT Credit Rules, 2004 for details)

(2) Where any service is exported, the Central Government may, by notification, grant **rebate of service tax or duty** paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

## 7. RETURNS

(1) Every assessee shall submit a half-yearly return in Form 'ST-3' or 'ST-3A', as the case may be, along with a copy of the Form G.A.R.-7, in triplicate for the months covered in the half-yearly return.

(2) Every assessee shall submit the half - yearly return by the 25th of the month following the particular half-year.

Provided that the Form 'ST-3' required to be submitted by the 25<sup>th</sup> day of October, 2012 shall cover the period between 1<sup>st</sup> April to 30<sup>th</sup> June, 2012 only.<sup>232</sup>

Provided further that the Form ST- 3 for the period between the 1<sup>st</sup> day of July 2012 to the 30<sup>th</sup> day of September 2012, shall be submitted by the 25<sup>th</sup> day of March, 2013<sup>233</sup>

(3) Every assessee shall submit the half yearly return electronically

(3A) Notwithstanding anything contained in sub-rule (1), every assessee shall submit an annual return for the financial year to which the return relates, in such form and manner as may be specified in the notification in the Official Gazette by the Central Board of Excise and Customs, by the 30th day of November of the succeeding financial year<sup>234</sup>

(3B) The Central Government may, subject to such conditions or limitations, specify by notification an assessee or class of assesses who may not be required to submit the annual return referred to in sub-rule(3A)<sup>235</sup>

(4) The Central Board of Excise and Customs may, by an order extend the period referred to in sub-rules (2) and (3A)<sup>236</sup>~~sub-rule (2)~~ by such period as

<sup>232</sup> Not. No. 47/2012-ST dated 28 September 2012

<sup>233</sup> Inserted Vide Not. No. 1/2013-ST dated 22 February 2013

<sup>234</sup> Inserted vide Notification No. 19/2016-ST w.e.f. 01.04.2016

<sup>235</sup> Inserted vide Notification No. 19/2016-ST w.e.f. 01.04.2016

<sup>236</sup> Substituted vide Notification No. 19/2016-ST w.e.f. 01.04.2016

deemed necessary under circumstances of special nature to be specified in such order.

## **7A. RETURNS**

### **IN CASE OF TAXABLE SERVICE PROVIDED BY GOODS TRANSPORT OPERATORS AND CLEARING AND FORWARDING AGENTS**

Notwithstanding anything contained in rule 7, an assessee, in case of service provided by -

- (a) goods transport operator for the period commencing on and from the 16th day of November, 1997 to 2nd day of June, 1998; and
- (b) clearing and forwarding agents for the period commencing on and from the 16th day of July, 1997 to 16th day of October, 1998,

shall furnish a return within a period of six months from the 13th day of May, 2003, in Form ST-3B alongwith copy of Form G.A.R.-7 in triplicate, failing which the interest and penal consequences as provided in the Act shall follow.

## **7B. REVISION OF RETURN**

(1) An assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of **ninety days** from the date of submission of the return under rule 7.

~~(1)~~(2) An assessee who has filed the annual return referred to in sub-rule (3A) of rule 7 by the due date may submit a revised return within a period of one month from the date of submission of the said annual return<sup>237</sup>

Explanation - Where an assessee submits a revised return, the 'relevant date' for the purpose of recovery of service tax, if any, under section 73 of the Act shall be the date of submission of such revised return.

## **7C. AMOUNT TO BE PAID FOR DELAY IN FURNISHING THE PRESCRIBED RETURN**

(1) Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of-

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<sup>237</sup> Inserted vide Notification No. 19/2016-ST w.e.f. 01.04.2016

- (i) **fifteen days** from the date prescribed for submission of such return, an amount of **five hundred rupees**;
- (ii) beyond fifteen days but not later than **thirty days** from the date prescribed for submission of such return, an amount of **one thousand rupees**; and
- (iii) **beyond thirty days** from the date prescribed for submission of such return an amount of **one thousand rupees plus one hundred rupees** for every day from the thirty first day till the date of furnishing the said return<sup>238</sup>:

Provided that the total amount payable in terms of this rule, for delayed submission of return, shall **not exceed the amount specified in section 70 of the Act**:

Provided further that where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded:

Provided also that 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 penalty**<sup>239</sup>.

Explanation - It is hereby declared that any pending proceedings under section 77 for delayed submission or non-submission of return that has been initiated before the date on which the Finance Bill, 2007 receives the assent of the President, shall also be deemed to be concluded if the amount specified for delay in furnishing the return is paid by the assessee within sixty days from the date of assent to the said Finance Bill.

(2) Where the annual return referred to in sub-rule (3A) of rule 7 is filed by the assessee after the due date, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day for the period of delay in filing of such return, subject to a maximum of twenty thousand rupees<sup>240</sup>

<sup>238</sup> If the delay in filing returns crosses 220 days (approx. 7.5 months) then the maximum penalty of Rs 20,000 is attracted (i.e. Rs 1,000 for first 30 days and Rs 100 per day for next 190 days)

<sup>239</sup> **No penalty for delayed NIL return– Suchak Mrkt. Pvt Ltd 2013-TIOL-63-CESTAT-KOL, AMRAPALI BARTER PVT. LTD. 2013 (32) S.T.R. 456 (Tri. - Kolkata)**

<sup>240</sup> Inserted vide Notification No. 19/2016-ST w.e.f. 01.04.2016

## **8. FORM OF APPEALS TO COMMISSIONER OF CENTRAL EXCISE (APPEALS)**

- (1) An appeal under section 85 of the Act to the Commissioner of Central Excise (Appeals) shall be in Form ST-4.
- (2) The appeal shall be filed in duplicate and shall be accompanied by a copy of order appealed against.

## **9. FORM OF APPEALS TO APPELLATE TRIBUNAL**

- (1) An appeal under sub-section (1) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-5 in quadruplicate and shall be accompanied by a copy of the Order appealed against (one of which shall be a certified copy).
- (2) An appeal under sub-section (2) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-7 in quadruplicate and shall be accompanied by a copy of the order of the Commissioner of Central Excise (one of which shall be a certified copy) and a copy of the order passed by the Central Board of Excise and Customs directing the Commissioner of Central Excise to apply to the Appellate Tribunal.
- (2A) An appeal under sub-section (2A) of section 86 of the Act to the Appellate Tribunal shall be made in Form ST-7 in quadruplicate and shall be accompanied by a copy of the order of the Commissioner of Central Excise (Appeals) (one of which shall be a certified copy) and a copy of the order passed by the Commissioner of Central Excise directing the Assistant Commissioner of Central Excise or as the case may be, the Deputy Commissioner of Central Excise to apply to the Appellate Tribunal; and
- (3) A Memorandum of cross-objections under sub-section (4) of section 86 of the Act, shall be made in Form ST-6 in quadruplicate.

## **10. Procedure and facilities for large taxpayer**

Notwithstanding anything contained in these rules, the following shall apply to a large taxpayer, -

- (1) A large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises.

**Explanation.** - A large taxpayer who has obtained a centralized registration under sub-rule (2) of Rule 4, shall submit a consolidated return for all such premises.

- (2) A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.
- (3) A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.
- (4) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise Officers of the said unit.
- (5) Provisions of these rules, insofar as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large taxpayer.

## 7. SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

[Notification No. 12/2006-S.T., dated 19-4-2006]

In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely :-

### 1. Short title and commencement. —

- (1) These rules may be called the Service Tax (Determination of Value) Rules, 2006.
- (2) They shall come into force on the date of their publication in the Official Gazette.

### 2. Definitions

In these rules, unless the context otherwise requires, -

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (b) "section" means the section of the Act;
- (c) "value" shall have the meaning assigned to it in section 67;
- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

### 2A. Determination of value of service portion in the execution of a works contract<sup>241</sup>

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

<sup>241</sup> As per Rule 2A two methodology wherein the 'service portion' would be as under:

Option	Value
I	Value = 'Gross amount charged' - Value of goods
II	Value = 40% of 'Total amount charged' for Original works <u>OR</u> 60% of 'Total amount charged' for Other works <u>OR</u> 70% of 'Total amount charged' for repairs etc of goods

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

*Explanation.*- For the purposes of this clause,-

- (a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

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

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

- (c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

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



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

(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for,-  
(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or  
(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

service tax shall be payable on **seventy per cent.** of the total amount charged for the works contract<sup>242</sup>.

;

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

(a) "original works" means-

- (i) all new constructions;
- (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

<sup>243</sup>(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

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<sup>242</sup> WEF 1 October 2014 vide Not. No. 11/2014-ST

<sup>243</sup> The Larger Bench in the case of Bhayana Builder Pvt. Ltd 2013-TIOL-1331-CESTAT-Del-LB in the context of **erstwhile** Not. No. 15/2004 (as amended from time to time) held that:

- (a) The value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the gross amount charged, within the meaning of the later expression in Section 67 of the Finance Act, 1994; and
- (b) Value of free supplies by service recipient do not comprise the gross amount charged under Notification No. 15/2004-ST, including the Explanation thereto as introduced by Notification No. 4/2005-ST.

**G D Builders [2013-TIOL-908-HC-DEL-ST]** - Service Tax on works contract/ construction service - Abatement - Notification No. 1/2006 - Abatement notifications optional, but once opted, have to be complied with fully.

or not supplied under the same contract or any other contract, after deducting-

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

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

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

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

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

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

*Example I* : [US \$ 1000] are sold by a customer at the rate of Rupees 45 per US \$. RBI reference rate for US \$ is Rupees 45.50 for that day. The taxable value shall be Rupees 500.

*Example II* : INR 70000 is changed into Great Britain Pound (GBP) and the exchange rate offered is Rupees 70, thereby giving GBP 1000. RBI reference rate for that day for GBP is Rupees 69. The taxable value shall be Rupees 1000.

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

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

## **2C. Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering**

Subject to the provisions of section 67, the value of service portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following Table, namely:-

Table

<b>Sl. No.</b>	<b>Description</b>	<b>Percentage of the total amount</b>
(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

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

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

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

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

### **3. Manner of determination of value**

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

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

### **4. Rejection of value<sup>244</sup>**

- (1) Nothing contained in rule 3 shall be construed as restricting or calling into question the power of the Central Excise Officer to satisfy himself as to the accuracy of any information furnished or document presented for valuation.
- (2) Where the Central Excise Officer is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these rules, he shall issue a notice to such service provider to show cause why the value of such taxable service for the purpose of charging service tax should not be fixed at the amount specified in the notice.

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<sup>244</sup> Service Tax - Pre-deposit: Free Telephone Service to employees and associates - Tribunal ordered pre-deposit of Rs . 80 Crores. Taxability doubtful for the period prior to 23.08.2007. Pre-deposit reduced to Rs. 25 Crores. Bharti Airtel Ltd [2013-TIOL-426-HC-DEL-ST](#)

(3) The Central Excise Officer shall, after providing reasonable opportunity of being heard, determine the value of such taxable service for the purpose of charging service tax in accordance with the provisions of the Act and these rules.

## **5. Inclusion in or exclusion<sup>245</sup> from value of certain expenditure or costs**

(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

*Explanation.*- For the removal of doubts, it is hereby clarified that for the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided,.

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-

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

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<sup>245</sup> If a receipt is for reimbursing the expenditure incurred for the purpose, the mere act of reimbursement, per se, would not justify the contention of the Revenue that the same, having the character of the remuneration or commission, deserves to be included in the sum amount of remuneration / Commission – **Sangmitra Service Agency 2013-TIOL-606-HC-MAD-ST**

- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

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

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;
- (c) does not use such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services.

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

**Illustration 1.** - X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent.

**Illustration 2.** - In the course of providing a taxable service, a service provider incurs costs such as travelling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service.

In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service.

**Illustration 3.** - A contracts with B, an architect for building a house. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. Value of the taxable service for charging service tax is what A pays to B.

**Illustration 4.** - Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the Company X.

## **6. Cases in which the commission, costs, etc., will be included or excluded**

(1) Subject to the provisions of section 67, the value of the taxable services shall include, -

- (i) the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;
- (ii) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;
- (iii) the amount of premium charged by the insurer from the policy holder;

- (iv) the commission received by the air travel agent from the airline;
  - (v) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
  - (vi) the reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
  - (vii) the commission or any amount received by the rail travel agent from the Railways or the customer;
  - (viii) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner;
  - (ix) the commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent: and.
  - (x) the amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service.
- (2) Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, does not include -
- (i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;
  - (ii) the airfare collected by air travel agent in respect of service provided by him;
  - (iii) the rail fare collected by [rail travel agent] in respect of service provided by him; and
  - (iv) **interest** on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immovable
  - (v) the **taxes** levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger: and]



- vi) **accidental damages** due to unforeseen actions not  
relatable to the provision of service; and
- (vii) **subsidies and grants** disbursed by the Government, not  
directly affecting the value of service

## 8. POINT OF TAXATION RULES, 2011

### ***[Notification No. 18/2011-S.T., dated 1-3-2011 as amended]***

In exercise of the powers conferred under [sub-section \(2\) of section 67A and<sup>246</sup>](#) clause (a) and clause (hhh) of subsection (2) of section 94 of the Finance Act, 1994. The Central Government has notified the following rules for the purpose of collection of service tax and determination of rate of service tax, namely,-

#### **1. Short title and commencement**

(1) These rules shall be called the Point of Taxation Rules, 2011.

(2) They shall come into force on the 1st day of April, 2011.

#### **2. Definitions**

In these rules, unless the context otherwise requires,-

(a) "Act" means the Finance Act, 1994 (32 of 1994);

(ba) "change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder;

(c) "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;

(d) "invoice" means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule;

(e) "point of taxation" means the point in time when a service shall be deemed to have been provided;

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<sup>246</sup> [Inserted vide Notification No. 10/2016-ST w.e.f. enactment of Finance Bill, 2016](#)

## **2A. Date of payment**

For the purposes of these rules, "date of payment" shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

Provided that —

- (A) the date of payment shall be the date of credit in the bank account when —
  - (i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and
  - (ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and
  - (iii) the payment is made by way of an instrument which is credited to a bank account,
- (B) if any rule requires determination of the time or date of payment received, the expression "date of payment" shall be construed to mean such date on which the payment is received;

## **3. Determination of point of taxation**

For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-

- (a) the time when the invoice for the service provided or agreed to be provided is issued :

"Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules,1994, the point of taxation shall be the date of completion of provision of the service";

- (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

"Provided that for the purposes of clauses (a) and (b), —

- (i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;
- (ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a)."

**Explanation** — For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

#### **4. Determination of point of taxation in case of change in effective rate of tax**

Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, shall be determined in the following manner, namely :-

- (a) in case a taxable service has been provided before the [change in effective rate of tax,-
  - (i) where the invoice for the same has been issued and the payment received after the [change in effective rate of tax], the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or
  - (ii) where the invoice has also been issued prior to [change in effective rate of tax] but the payment is received after the change in effective rate of tax, the point of taxation shall be the date of issuing of invoice; or
  - (iii) where the payment is also received before the [change in

effective rate of tax], but the invoice for the same has been issued after the [change in effective rate of tax], the point of taxation shall be the date of payment;

(b) in case a taxable service has been provided after the [change in effective rate of tax,-

(i) where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the point of taxation shall be the date of payment; or

(ii) where the invoice has been issued and the payment for the invoice received before the [change in effective rate of tax], the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or

(iii) where the invoice has also been raised after the [change in effective rate of tax] but the payment has been received before the [change in effective rate of tax], the point of taxation shall be date of issuing of invoice.

## **5. Payment of tax in case of new services**

Where a service is taxed for the first time, then,—

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

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

[Explanation 1.- This rule shall apply mutatis mutandis in case of new levy on services<sup>247</sup>](#)

[Explanation 2.- New levy or tax shall be payable on all the cases other than specified above<sup>248</sup>](#)

## **7. Determination of point of taxation in case of specified services or persons**

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<sup>247</sup> [Inserted vide Notification No. 10/2016-ST w.e.f. 01.03.2016](#)

<sup>248</sup> [Inserted vide Notification No. 10/2016-ST w.e.f. 01.03.2016](#)

Notwithstanding anything contained in rule 3,4 and 8<sup>249</sup>, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months<sup>250</sup>

Provided further that 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.

## **8. Determination of point of taxation in case of copyrights, etc**

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

### **8A. Determination of point of taxation in other cases**

Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

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<sup>249</sup> WEF 1 October 2014 vide Not. No. 13/2014-ST

<sup>250</sup> WEF 1 October 2014 vide Not. No. 13/2014-ST

## 9. Transitional Provisions

Nothing contained in [these rules] shall be applicable, -

- (i) where the provision of service is completed; or
- (ii) where invoices are issued

prior to the date on which these rules come into force.

**Provided** that services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued upto the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be.

10. Notwithstanding anything contained in the first proviso to rule 7, if the invoice in respect of a service, for which point of taxation is determinable under rule 7 has been issued before the 1<sup>st</sup> day of October, 2014 but payment has not been made as on the said day, the point of taxation shall, -

(a) if payment is made within a period of six months of the date of invoice, be the date on which payment is made

(b) if payment is not made within a period of six months of the date of invoice, be determined as if rule 7 and this rule do not exist<sup>251</sup>

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<sup>251</sup> WEF 1 October 2014 vide Not. No. 13/2014-ST

## 9. PLACE OF PROVISION OF SERVICES RULES, 2012<sup>252</sup>

### 1. Short title, extent and commencement

- (1) These rules may be called the Place of Provision of Services Rules, 2012.
- (2) They shall come into force on 1<sup>st</sup> day of July, 2012.

### 2. Definitions

In these rules, unless the context otherwise requires,-

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (b) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (c) "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);
- (d) "continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued;
- (e) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) 'intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account<sup>253</sup>

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<sup>252</sup> **Manner of applying POPSR** – First, one has to determine whether any Rule from Rule 4 to Rule 12 is applicable? If yes, then the place of provision of service would be determined as per that specific Rule (say for e.g. Rule 4). However, in case, Rules 4 to 12 are not applicable, then the Rule 3 (i.e. Residual rule) would be applicable, i.e. the place of provision of service would be the place where recipient is located. Further, as per Rule 14, in case more than one Rule is applicable, then the Rule which occurs later shall be applied.

<sup>253</sup> Substituted WEF 1 October 2014 vide Not. No. 14/2014-ST



(g) "leg of journey" means a part of the journey that begins where passengers embark or disembark the conveyance, or where it is stopped to allow for its servicing or refueling, and ends where it is next stopped for any of those purposes;

(h) "location of the service provider" means-

(a). where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the service provider is not covered under sub-clause (a):

(i) the location of his business establishment; or

(ii) where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or

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

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

(i) "location of the service receiver" means:-

(a). where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the recipient of service is not covered under sub-clause (a):

(i) the location of his business establishment; or

(ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or

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

(iv) in the absence of such places, the usual place of residence of the recipient of service.

*Explanation:-*. For the purposes of clauses (h) and (i), "usual place of residence" in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

*Explanation 2:-*. For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.

- (j) "means of transport" means any conveyance designed to transport goods or persons from one place to another;
- (k) "non-banking financial company" means-
  - (i) a financial institution which is a company; or
  - (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
  - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;
- (l) "online information and database access or retrieval services" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;
- (m) "person liable to pay tax" shall mean the person liable to pay service tax under section 68 of the Act or under sub-clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;
- (n) "provided" includes the expression "to be provided";
- (o) "received" includes the expression "to be received";
- (p) "registration" means the registration under rule 4 of the Service Tax Rules, 1994;
- (q) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services.
- (r) words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

### **3. Place of provision generally<sup>254</sup>**

The place of provision of a service shall be the location of the recipient of service:

Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

### **4. Place of provision of performance based services**

The place of provision of following services shall be the location where the services are actually performed, namely:-

- (a) services provided in respect of **goods** that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service<sup>255</sup>:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair<sup>256</sup>

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

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<sup>254</sup> Advance Ruling - Marketing and sales support in India to a firm in China and USA is covered under Rule 3 and amounts to export of services [[2013-TIOL-03-ARA-ST](#)]

<sup>255</sup> Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/ inspection/ certification/ analysis of goods, dry cleaning etc. – Para 5.4.1 of Education Guide

<sup>256</sup> Substituted WEF 1 October 2014 vide Not. No. 14/2014-ST

## **5. Place of provision of services relating to immovable property**

The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

## **6. Place of provision of services relating to events**

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

## **7. Place of provision of services provided at more than one location**

Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

## **<sup>257</sup>8. Place of provision of services where provider and recipient are located in taxable territory**

Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

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<sup>257</sup> From the language used in the section 66C it may be noted that section 66C permits determination of place of provision by '**having regard to the nature and description of various services**'. However, this principle is completely ignored in Rule 8 of Place of Provision of Services Rules, 2012. Thus, it may be contended that the Rules are overriding the Section 66C.

## **9. Place of provision of specified services**

The place of provision of following services shall be the location of the service provider:-

- (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- (b) Online information and database access or retrieval services;
- (c) Intermediary services;
- (d) Service consisting of hiring of all means of transport other than,-
  - (i) aircrafts, and
  - (ii) vessels except yachts, upto a period of one month<sup>258</sup>

## **10. Place of provision of goods transportation services**

The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

## **11. Place of provision of passenger transportation service**

The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

## **12. Place of provision of services provided on board a conveyance**

Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

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<sup>258</sup> Substituted WEF 1 October 2014 vide Not. No. 14/2014-ST

### **13. Powers to notify description of services or circumstances for certain purposes**

In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

### **14. Order of application of rules**

Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, 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.

[F.No. 334 /1/ 2012-TRU]

## 10. CENVAT CREDIT RULES, 2004

*[Notification No. 23/2004-C.E. (N.T.), dated 10-9-2004 as amended]*

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994) and in supersession of the CENVAT Credit Rules, 2002 and the Service Tax Credit Rules, 2002, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely :-

### 1. Short title, extent and commencement

(1) These rules may be called the CENVAT Credit Rules, 2004.

(2) They extend to the whole of India :

**Provided** that nothing contained in these rules relating to availment and utilization of credit of service tax shall apply to the State of Jammu and Kashmir.

(3) They shall come into force from the date of their publication in the Official Gazette.

### 2. Definitions

In these rules, unless the context otherwise requires, -

(a) "capital goods" means :-

(A) the following goods, namely :-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under [heading 6804 and wagons of sub-heading 860692<sup>259</sup>](#)~~heading 6804~~ of the First Schedule to the Excise Tariff Act;
- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;

<sup>259</sup> [Substituted vide Notification No. 13/2016-CE\(NT\) w.e.f. 01.04.2016](#)

- (vi) tubes and pipes and fittings thereof; \* \* \*
- (vii) storage tank, and
- (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers, used -
  - (1) in the factory of the manufacturer of the final products, but ~~does not include any equipment or appliance used in an office~~<sup>260</sup>; or
  - (1A) outside the factory of the manufacturer of the final products for generation of electricity or for pumping of water<sup>261</sup> for captive use within the factory; or
  - (2) for providing output service;

(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for -

- (i) providing an output service of renting of such motor vehicle; or
- (ii) transportation of inputs and capital goods used for providing an output service; or
- (iii) providing an output service of courier agency;

(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of -

- (i) transportation of passengers; or
- (ii) renting of such motor vehicle; or
- (iii) imparting motor driving skills;

(D) components, spares and accessories of motor vehicles which are capital goods for the assessee;

(b) "Customs Tariff Act" means the Customs Tariff Act, 1975 (51 of 1975);

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<sup>260</sup> Deleted vide Notification No. 13/2016-CE(NT) w.e.f. 01.04.2016

<sup>261</sup> Inserted vide Notification No. 13/2016-CE(NT) w.e.f. 01.04.2016



(c) "Excise Act" means the Central Excise Act, 1944 (1 of 1944);

(d) "exempted goods" means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty and goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 or under entries at serial numbers 67 and 128 of Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed;

(e) "exempted service" means a -

- (1) taxable service which is exempt from the whole of the service tax leviable thereon; or
- (2) service, on which no service tax is leviable under section 66B of the Finance Act; or
- (3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service

(a) which is exported in terms of rule 6A of the Service Tax Rules, 1994.

~~(a)~~(b) by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India<sup>262</sup>

(f) "Excise Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986);

(g) "Finance Act" means the Finance Act, 1994 (32 of 1994);

(h) "final products" means excisable goods manufactured or produced from input, or using input service;

(ij) "first stage dealer" means a dealer, who purchases the goods directly from,

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(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

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<sup>262</sup> Inserted vide Notification No. 13/2016-CE(NT) w.e.f. 01.03.2016

(k) "input" means -

- (i) all goods used in the factory by the manufacturer of the final product; or
- (ii) 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
- (iii) all goods used for generation of electricity or steam or pumping of water<sup>263</sup> for captive use; or
- ~~(iv)~~ (iv)—all goods used for providing any output service or;
- ~~(iv)~~(v) all capital goods which have a value upto ten thousand rupees per piece<sup>264</sup>

but excludes -

- (A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;
- (B) any goods used for -
  - (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
  - (b) laying of foundation or making of structures for support of capital goods,  
except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;
- (C) capital goods except
  - (i) when used as parts or components in the manufacture of a final product;
  - (ii) the value of such capital goods is upto ten thousand rupees per piece
- (D) motor vehicles;
- (E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for

<sup>263</sup> Inserted vide Notification No. 13/2016-CE(NT) w.e.f. 01.04.2016

<sup>264</sup> Inserted vide Notification No. 13/2016-ST w.e.f. 01.04.2016

personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

**Explanation.** - For the purpose of this clause, "free warranty" means a 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;

<sup>265</sup>(I) "input service" means any service, -

- (i) used by a provider of output service for providing an output service; or
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal<sup>266</sup>;

but excludes, -

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<sup>265</sup> W.e.f. 1 April 2011, the term "input service" is defined to inter-alia mean any service used by the provider of taxable service for manufacture of excisable goods and the definition further provides for various inclusions and exclusions there from. It is pertinent to note that, post 1 April 2011, the term 'activities relating to business' does not form part of the aforesaid amended definition of 'input services'. Also, the term 'setting up' has been deleted. The intention seems to be to deny CENVAT credit on services availed for setting up of factory or premises. However, this has led to unnecessary denial of Cenvat credit in on services which are essential. For instance the Business Process Outsourcing (BPO) sector cannot operate without cabs for pick and drop for its employees. Similarly, a manufacturing unit located at the outskirts of the city needs a outdoor caterer. Thus, it can be observed that these are essential services for a business to exist and there is no sound rational for denial of tax credit on these services. Thus, these Cenvat credit provisions should be re-visited and CENVAT credit should be made seamless. This will provide a non-adversarial tax environment to the industry.

<sup>266</sup> CENVAT - Rule 2(I) of CCR, 2004 - Whether Outward transportation of finished goods from place of removal is covered by definition of "Input Service" before 01.04.2008 - Calcutta High Court refuses to accept Karnataka HC decision in ABB Ltd. allowing credit on GTA service - CESTAT order set aside - Vesuvius India Ltd [2013-TIOL-1038-HC-KOL-ST](#)

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

- (a) construction or execution of works contract of a building or a civil structure or a part thereof; or
- (b) 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

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
- (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) **such as** those provided in relation to 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 extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

(m) "input service distributor" means an office of the manufacturer or producer of final products or provider of output service or an outsourced manufacturing unit<sup>267</sup>, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be;

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<sup>267</sup> [Inserted vide Notification No. 13/2016-CE\(NT\) w.e.f. 01.04.2016](#)

(n) "job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression "job worker" shall be construed accordingly;

(na) "large tax payer" shall have the meaning assigned to it in the Central Excise Rules, 2002;

(naa) "manufacturer" or "producer", -

(i) in relation to articles of jewellery or other articles of precious metals falling under Heading 7113 or 7114 as the case may be of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of the Central Excise Rules, 2002;

(ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002;

(o) "notification" means the notification published in the Official Gazette;

(p) "output service" means any service provided by a provider of service located in the taxable territory but shall not include a service, -

(1) specified in section 66D of the Finance Act; or

(2) where the whole of service tax is liable to be paid by the recipient of service.

(q) "person liable for paying service tax" has the meaning as assigned to it in clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;

(qa) "place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory,

from where such goods are removed<sup>268</sup>

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<sup>268</sup> Inserted from 11 July 2014 vide Not. No. 21/2014-CE (NT)

(r) "provider of taxable service" include a person liable for paying service tax;

(s) "second stage dealer" means a dealer who purchases the goods from a first stage dealer;

(t) words and expressions used in these rules and not defined but defined in the Excise Act or the Finance Act shall have the meanings respectively assigned to them in those Acts.

### **3. CENVAT credit**

(1) A manufacturer or producer of final products or a provider of output service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;

**Provided** that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods -

(a) in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed; or

(b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed;

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);

(via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) , (vi) and (via);

**Provided** that CENVAT credit shall not be allowed in excess of eighty-five per cent. of the additional duty of customs paid under sub-section (1) of section 3 of the Customs Tariff Act, on ships, boats and other floating structures for breaking up falling under tariff item 8908 00 00 of the First Schedule to the Customs Tariff Act;

(viiia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act \* \* \* :

**Provided** that a provider of output service shall not be eligible to take credit of such additional duty;

(viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax leviable under section 66 of the Finance Act; \* \* \*

(ixa) the service tax leviable under section 66A of the Finance Act;

(ixb) the service tax leviable under section 66B of the Finance Act;

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);

(xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and

(xi) the additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005), :

paid on -

(i) any input or capital goods received in the factory of manufacture of final product or **by** the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the

Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India *vide* number G.S.R. 547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

**Provided** that the CENVAT credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of debonding of the unit in terms of the para 8 of Notification No. 22/2003-Central Excise, published in the Gazette of India, part II, Section 3, sub-section (i), *vide* number G.S.R. 265(E), dated, the 31st March, 2003.

**Explanation.** - For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 of the First Schedule to the Customs Tariff Act.

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.

(3) Notwithstanding anything contained in sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received on and after the 10th day of September, 2004 and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.

- (4) The CENVAT credit may be utilized for payment of -
- (a) any duty of excise on any final product; or
  - (b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or
  - (c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or
  - (d) an amount under sub-rule (2) of rule 16 of Central Excise Rules, 2002; or



(e) service tax on any output service :

**Provided** that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be :

**Provided** further that CENVAT credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed :

**Provided** also that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

- (i) No. 32/99-Central Excise, dated the 8th July, 1999 G.S.R. 508(E), dated 8th July, 1999;
- (ii) No. 33/99-Central Excise, dated the 8th July, 1999 G.S.R. 509(E), dated 8th July, 1999;
- (iii) No. 39/2001-Central Excise, dated the 31st July, 2001 G.S.R. 565 (E), dated the 31st July, 2001;
- (iv) No. 56/2002-Central Excise, dated the 14th November, 2002 G.S.R. 764(E), dated the 14th November, 2002;
- (v) No. 57/2002-Central Excise, dated 14th November, 2002 G.S.R. 765(E), dated the 14th November, 2002;
- (vi) No. 56/2003-Central Excise, dated the 25th June, 2003 G.S.R. 513(E), dated the 25th June, 2003; and
- (vii) No. 71/2003-Central Excise, dated the 9th September, 2003 G.S.R. 717(E), dated the 9th September, 2003,

shall, respectively, be utilized only for payment of duty on final products, in respect of which exemption under the said respective notifications is availed of :

**Provided** also that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, \* \* \* shall be utilised for payment of service tax on any output service :

**Provided** also that the CENVAT credit of any duty specified in sub-rule (1), except the National Calamity Contingent duty in item (v) thereof, shall not be utilized for payment of the [National Calamity Contingent duty leviable under](#)

~~section 136 of the Finance Act, 2001 (14 of 2001)<sup>269</sup> said National Calamity Contingent duty on goods falling under tariff items 8517 12 10 and 8517 12 90 respectively of the First Schedule of the Central Excise Tariff :~~

**Provided** also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilized for payment of the Clean Energy Cess leviable under section 83 of the Finance Act, 2010 (14 of 2010) :

**Provided** also that the CENVAT credit of any duty mentioned in sub-rule (1), other than credit of additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005), shall not be utilised for payment of said additional duty of excise on final products.

~~**Provided also that** the CENVAT credit of any duty specified in sub-rule (1) shall not be utilised for payment of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015)<sup>270</sup>~~

~~**Provided also that** CENVAT credit shall not be utilised for payment of Infrastructure Cess leviable under sub-clause (1) of clause 159 of the Finance Bill, 2016<sup>271</sup>~~

**Explanation.** - CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9 :

**Provided** that such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service :

\* \* \*

**Provided** further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products :

\* \* \* \* \*

<sup>269</sup> [Substituted vide Notification No. 13/2016-CE\(NT\) w.e.f. 01.03.2016](#)

<sup>270</sup> [Inserted vide Not. No. 02/2016 - ST Dated 03.02.2016.](#)

<sup>271</sup> [Inserted vide Notification No. 13/2016-CE\(NT\) w.e.f. 01.03.2016](#)

(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, ~~whether as capital goods or as scrap or waste~~<sup>272</sup>the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely : -

(i) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter :

**Provided** that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

<sup>273</sup>(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

(5B) If the value of any,

(i) input, or

(ii) capital goods before being put to use,

on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods :

**Provided** that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of output services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

<sup>272</sup> Amended / deleted vide Not. No. 12/2013-CE dated 27 September 2013

<sup>273</sup> Inserted vide Not. No. 12/2013-CE dated 27 September 2013

<sup>274</sup>~~Explanation.—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<sup>275</sup>~~

(5C) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods and the CENVAT credit taken on input services used in or in relation to the manufacture or production of said goods<sup>276</sup> shall be reversed.

Explanation 1.- The amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5<sup>th</sup> day of the following month except for the month of March, where such payment shall be made on or before the 31<sup>st</sup> day of the month of March.

Explanation 2.- If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), (5B) and (5C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilized<sup>277</sup>

(6) The amount paid under sub-rule (5) and sub-rule (5A) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (5) and sub-rule (5A).

(7) Notwithstanding anything contained in sub-rule (1) and sub-rule (4), -  
(a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3, 5, 6 and 7 of Notification No. 23/2003-Central Excise, dated the 31st March, 2003

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<sup>274</sup> Inserted vide Not. No. 3/2013-CE dated 1 March 2013 [Author Note – This is 'Explanation' thus it could have retrospective effect]

<sup>275</sup> Omitted vide Not. No. 1/2014-CE dated 8.1.2014

<sup>276</sup> Inserted vide Not. No. 1/2014-CE dated 8.1.2014

<sup>277</sup> Expl. 1 and 2 inserted vide Not. No. 1/2014-CE dated 8.1.2014

G.S.R. 266(E), dated the 31st March, 2003 and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated the 31st March, 2003 G.S.R. 266(E), dated the 31st March, 2003, shall be admissible equivalent to the amount calculated in the following manner, namely :-

Fifty per cent. of X multiplied by  $\{(1+BCD/100) \text{ multiplied by } (CVD/100)\}$ , where BCD and CVD denote *ad valorem* rates, in per cent. of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value :

**Provided** that the CENVAT credit in respect of inputs and capital goods cleared on or after 1st March, 2006 from an export oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated 31st March, 2003 G.S.R. 266(E), dated the 31st March, 2003 shall be equal to X multiplied by  $(1+BCD/200)$  multiplied by  $(CVD/100)$  :

**Provided** further that the CENVAT credit in respect of inputs and capital goods cleared on or after the 7th September, 2009 from an export-oriented undertaking or by a unit in Electronic Hardware Technology Park or in a Software Technology Park, as the case may be, on which such undertaking or unit has paid -

(A) excise duty leviable under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003-Central Excise, dated 31st March, 2003 G.S.R. 266(E), dated the 31st March, 2003; and

(B) the Education Cess leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 and the Secondary and Higher Education Cess leviable under section 136 read with section 138 of the Finance Act, 2007, on the excise duty referred to in (A),

shall be the aggregate of -

- (I) that portion of excise duty referred to in (A), as is equivalent to -
    - (i) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, which is equal to the duty of excise under clause (a) of sub-section (1) of section 3 of the Excise Act;
    - (ii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act; and
  - (II) the Education Cess and the Secondary and Higher Education Cess referred to in (B).
- (b) CENVAT credit in respect of -
- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
  - (ii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);
  - (iii) the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No. 2) Act, 2004 (23 of 2004);
  - (iiia) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);
  - (iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under items (i), (ii) and (iii) above;
  - (v) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);
  - (vi) the education cess on taxable services leviable under section 91 read with section 95 of the Finance (No. 2) Act, 2004 (23 of 2004);
  - (via) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and
  - (vii) the additional duty of excise leviable under section 85 of the

Finance Act, 2005 (18 of 2005),

shall be utilised towards payment of duty of excise or as the case may be, of service tax leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), or the education cess on excisable goods leviable under section 91 read with section 93 of the said Finance (No. 2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007) or the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003), or the education cess on taxable services leviable under section 91 read with section 95 of the said Finance (No. 2) Act, 2004 (23 of 2004), or the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007), or the additional duty of excise leviable under section 85 of the Finance Act, 2005 (18 of 2005) respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves, if such inputs are removed as such or after being partially processed or on any output service :

**Provided** that the credit of the education cess on excisable goods and the education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services :

**Provided** further that the credit of the Secondary and Higher Education Cess on excisable goods and the Secondary and Higher Education Cess on taxable services can be utilized, either for payment of the Secondary and Higher Education Cess on excisable goods or for the payment of the Secondary and Higher Education Cess on taxable services.

**Explanation.** - For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act.

(c) the CENVAT credit, in respect of additional duty leviable under section

3 of the Customs Tariff Act, paid on marble slabs or tiles falling under tariff items 2515 12 20 and 2515 12 90 respectively of the First Schedule to the Excise Tariff Act shall be allowed to the extent of thirty rupees per square metre;

**Explanation.** - Where the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail over the provisions of these rules.

#### **4. Conditions for allowing CENVAT credit**

(1) 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 or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be<sup>278</sup> :

**Provided** that in respect of final products, namely, articles of jewellery or other articles of precious metals falling under Heading 7113 or 7114, as the case may be of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.

**Provided** further that the CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after one year<sup>279</sup> of the date of issue of any of the documents specified in sub- rule (1) of rule 9<sup>280</sup>

(2)(a) The CENVAT credit in respect of **capital goods** received in a factory

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<sup>278</sup> Amended by Not. No. 6/2015-CE (NT) w.e.f 01.03.2015

<sup>279</sup> Amended by Not. No. 06/2015-CE (NT) w.e.f. 01.03.2015. It is possible to take a view that this amendment will be applicable for all invoices on which credit is availed after 1 March 2015 irrespective of date of invoice by relying on the judgment of Apex Court in case of Osram Surya (P) Ltd. Appeal (Civil) 2359 of 1999 /2002 (142) ELT 5 (SC)]

<sup>280</sup> Inserted from 1 September 2014 vide Not. No. 21/2014-CE (NT)



or in the premises of the provider of output service or **outside the factory** of the manufacturer of the final products for generation of electricity for captive use within the factory or in the premises of the job worker, in case capital goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be<sup>281</sup>, at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year :

**Provided** that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year :

**Provided** further that the CENVAT credit of the additional duty leviable under **sub-section (5) of section 3** of the Customs Tariff Act, \* \* \* \* in respect of capital goods shall be allowed of the capital goods in the factory of a manufacturer :

**Provided** also that where an assessee is eligible to avail of the exemption under a notification based on the value of clearances in a financial year, the CENVAT credit in respect of capital goods received by such assessee shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year :

**Provided** also that the CENVAT credit in respect of capital goods may be taken by the **provider of output service** when the **capital goods are delivered** to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.

**Explanation.** – [<sup>282</sup>For the removal of doubts, it is hereby clarified that-](#)

(i) [an assessee engaged in the manufacture of articles of jewellery, other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under chapter heading 7113 of the First Schedule of the Excise Tariff Act, shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed rupees twelve crore](#)

<sup>281</sup> Amended by Not. No. 06/2015-CE (NT)

<sup>282</sup> [Substituted vide Notification No. 13/2016-CE\(NT\) w.e.f. 01.03.2016](#)

(ii) For the removal of doubts, it is hereby clarified that an assessee shall be "eligible" if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification did not exceed rupees four hundred lakhs.

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act, are in the **possession** of the manufacturer of final products, or provider of output service in such subsequent years.

*Illustration.* - A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit up to a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on **lease, hire purchase or loan agreement**, from a financing company.

(4) 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).

(5)(a)(i) The CENVAT credit on inputs shall be allowed even if any inputs as such or after being partially processed are sent to a job worker and from there subsequently sent to another job worker and likewise, for further processing, testing, repairing, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT credit that the inputs or the products produced therefrom are

**received back by the manufacturer or the provider of output service, as the case may be, within one hundred and eighty days of their being sent** from the factory or premises of the provider of output service, as the case may be:

Provided that credit shall also be allowed even if any inputs are directly sent to a job worker without their being first brought to the premises of the manufacturer or the provider of output service, as the case may be, and in such a case, the period of one hundred and eighty days shall be counted from the date of receipt of the inputs by the job worker;

(ii) the CENVAT credit on capital goods shall be allowed even if any capital goods as such are sent to a job worker for further processing, testing, repair, re-conditioning or for the manufacture of intermediate goods necessary for the manufacture of final products or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or the provider of output service taking the CENVAT credit that the capital goods are **received back by the manufacturer or the provider of output service, as the case may be, within two years of their being so sent:**

Provided that credit shall be allowed even if any capital goods are directly sent to a job worker without their being first brought to the premises of the manufacturer or the provider of output service, as the case may be, and in such a case, the period of two years shall be counted from the date of receipt of the capital goods by the job worker;

(iii) if the inputs or capital goods, as the case may be, are not received back within the time specified under sub-clause (i) or (ii), as the case may be, by the manufacturer or the provider of output service, the manufacturer or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods, as the case may be, by debiting the CENVAT credit or otherwise, but the manufacturer or the provider of output service may take the CENVAT credit again when the inputs or capital goods, as the case may be, are received back in the factory or in the premises of the provider of output service.<sup>283</sup>

[\(b\) The CENVAT credit shall also be allowed to a manufacturer of final products in respect of jigs, fixtures, moulds and dies or tools falling under](#)

<sup>283</sup> Substituted by Not. No. 6/2015-CE (NT)

Chapter 82 of the First Schedule to the Excise Tariff Act, sent by such manufacturer to, -

(i) another manufacturer for the production of goods; or

(ii) a job worker for the production of goods on his behalf, according to his specifications:

Provided that such credit shall also be allowed where jigs, fixtures, moulds and dies or tools falling under Chapter 82 of the First Schedule to the Excise Tariff Act, are sent by the manufacturer of final products to the premises of another manufacturer or job worker without bringing these to his own premises<sup>284</sup> ~~(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to,~~

~~(i) another manufacturer for the production of goods; or~~

~~(ii) a job worker for the production of goods on his behalf, according to his specifications.~~

(6) The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a job-worker may, by an order, which shall be valid for three financial years<sup>285</sup> ~~valid for a financial year~~, in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

(7) The CENVAT credit in respect of **input service** shall be allowed, on or after the day on which the **invoice, bill or**, as the case may be, **challan** referred to in rule 9 is received :

[Provided that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid<sup>286</sup>

<sup>287</sup>Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan

<sup>284</sup> Substituted vide Notification No. 13/2016-CE(NT) w.e.f. 01.04.2016

<sup>285</sup> Substituted vide Notification No. 13/2016-CE(NT) w.e.f. 01.04.2016

<sup>286</sup> Substituted by Not. No. 6/2015-CE (NT)

<sup>287</sup> Deleted by Not. No. 6/2015-CE (NT)

referred to in rule 9 is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules<sup>288</sup>

**Provided** also that if any payment or part thereof, made towards an input service is refunded or a credit note is received by the manufacturer or the service provider who has taken credit on such input service, he shall pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited :

**Provided** also that CENVAT credit in respect of an invoice, bill or, as the case may be, challan referred to in rule 9, issued before the 1st day of April, 2011 shall be allowed, on or after the day 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.

Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after one year<sup>289</sup> of the date of issue of any of the documents specified in sub-rule (1) of rule 9<sup>290</sup>

*Provided also that CENVAT Credit of Service Tax paid on the charges paid or payable for the service provided by way of assignment, by the Government or any other person, of the right to use any natural resource, shall be spread over such period of time as the period for which the right to use has been assigned. CENVAT Credit in the financial year in which the right to use is acquired and in the subsequent years during which such right is retained by the manufacturer of goods or provider of output service as the case may be, shall be taken of an amount determined as per the following formula:*

*Amount of CENVAT Credit that shall be taken in a financial year = Service Tax paid on the charges payable for the assignment of the right to use / No. of Years for which the rights have been assigned*

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<sup>288</sup> Substituted by Not. No. 6/2015-CE (NT)

<sup>289</sup> Amended by Not. No. 06/2015-CE (NT) w.e.f 01.03.2015

<sup>290</sup> Inserted from 1 September 2014 vide Not. No. 21/2014-CE (NT)

Provided also that where the manufacturer of goods or provider of output service, as the case may be, further assigns such right to use assigned to him by the Government or any other person, in any financial year, to another person against a consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year:

Provided also that CENVAT credit of annual or monthly user charges payable in respect of any service by way of assignment of right to use natural resources shall be allowed in the same financial year in which they are paid.<sup>291</sup>

**Explanation I.** - The amount mentioned in this rule<sup>292</sup>, unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

**Explanation II.** - If the manufacturer of goods or the provider of output service fails to pay the amount payable under this rule<sup>293</sup>, it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

**Explanation III** - In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rule (7) shall be read respectively as "following quarter" and "quarter ending with the month of March".

## **5. Refund of CENVAT Credit<sup>294</sup>**

(1) 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

<sup>291</sup> [Inserted vide Notification No. 13/2016-CE\(NT\) w.e.f. 01.04.2016](#)

<sup>292</sup> Amended by Not. No. 6/2015-CE (NT)

<sup>293</sup> Amended by Not. No. 6/2015-CE (NT)

<sup>294</sup> CX - Refund - Certainty promotes the rule of law - While adjudicating upon refund claims it is necessary in the interest of justice for the assessing officers as well as the first appellate authorities to dispose of all the objections so that proceedings do not remain pending for several years in CESTAT - HC directs CBEC to issue necessary guidelines in this regard - **OIL & NATURAL GAS CORPORATION LTD - 2013-TIOL-809-HC-MUM-CX**

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 by the Board by notification in the Official Gazette :

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

Where, -

- (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, 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, namely :-  
 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;
  - (E) "Total turnover" means sum total of the value of -
    - (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
    - (b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and
    - (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.
- (2) This rule shall apply to exports made on or after the 1st April, 2012 :

**Provided** that the refund may be claimed under this rule, as existing, prior to the commencement of the CENVAT Credit (Third Amendment) Rules, 2012, within a period of one year from such commencement :

**Provided** further that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Service Tax Rules, 1994 in respect of such tax.

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

- (1) "export service" means a service which is provided as per rule 6A of the Service Tax Rules, 1994;
- (1A) "export goods" means any goods which are to be taken out of India to a place outside India<sup>295</sup>
- (2) "relevant period" means the period for which the claim is filed.

**Explanation 2.** - For the purposes of this rule, the value of services shall be determined in the same manner as the value for the purposes of sub-rules (3) and (3A) of rule 6 is determined.

### **5A. Refund of CENVAT credit to units in specified areas**

Notwithstanding anything contrary contained in these rules, where a manufacturer has cleared final products in terms of notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 20/2007-Central Excise, dated the 25th April, 2007 and is unable to utilize the CENVAT credit of duty taken on inputs required for manufacture of final products specified in the said notification, other than final products which are exempt or subject to nil rate of duty, for payment of duties of excise on said final products, then the Central Government may allow the refund of such credit subject to such procedure, conditions and limitations, as may be specified by notification.

**Explanation :** For the purposes of this rule, "duty" means the duties specified in sub-rule (1) of rule 3 of these rules.

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<sup>295</sup> Inserted by Not. No. 6/2015-CE (NT) w,e,f 01.03.2015



## **5B. Refund of CENVAT credit to service providers providing services taxed on reverse charge basis**

A provider of service providing services notified under sub-section (2) of section 68 of the Finance Act and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette<sup>296</sup>.

## **6. Obligation of a manufacturer or producer of final products and a provider of output service<sup>297</sup>**

The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be :

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Explanation 1.- For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2.- Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made there under.

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<sup>296</sup> Procedure for refund for Partial RCM service providers provided vide Not. No. 12/2014-CE (NT)-

<sup>297</sup> Substituted vide Notification No. 13/2016- CE(NT) w.e.f. 01.04.2016

Explanation 3. – For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a ‘service’ as defined in section 65B(44) of the Finance Act, 1994.

Explanation 4. – Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder. (1) The CENVAT credit shall not be allowed on such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).

**Provided** that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Explanation 1. — For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared **for a consideration from the factory**

Explanation 2. — Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made thereunder

(2) A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input servicesWhere a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for—

~~(a) — the receipt, consumption and inventory of inputs used —  
(i) — in or in relation to the manufacture of exempted goods;  
(ii) — in or in relation to the manufacture of dutiable final products  
excluding exempted goods;  
(iii) — for the provision of exempted services;  
(iv) — for the provision of output services excluding exempted services;~~  
and

~~(b) — the receipt and use of input services —  
(i) — in or in relation to the manufacture of exempted goods and their  
clearance upto the place of removal;  
(ii) — in or in relation to the manufacture of dutiable final products,  
excluding exempted goods, and their clearance upto the place of removal;  
(iii) — for the provision of exempted services; and  
(iv) — for the provision of output services excluding exempted services,  
and shall take CENVAT credit only on inputs under sub-clauses (ii) and (iv)  
of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b).~~

(3) A manufacturer who manufactures two classes of goods, namely :-

(i) non-exempted goods removed;

(ii) exempted goods removed; or

(b) a provider of output service who provides two classes of services,  
namely:-

(i) non-exempted services;

(ii) exempted services.

shall follow any one of the following options applicable to him, namely

(i) Pay an amount equal to six per cent. of value of the exempted  
goods and seven per cent. of value of the exempted services  
subject to a maximum of the total credit available in the account  
of the assessee at the end of the period to which the payment  
relates; or

(ii) Pay an amount as determined under sub-rule (3A)

Provided that if any duty of excise is paid on the exempted goods, the  
same shall be reduced from the amount payable under clause (i) :

Provided further that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be seven per cent. of the value so exempted

Provided also that in case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to two per cent. of value of the exempted services

Explanation 1.- If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year

Explanation 2.- No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services

Explanation 3.- For the purposes of this sub-rule and sub-rule(3A),-

(a) non-exempted goods removedll means the final products excluding exempted goods manufactured and cleared upto the place of removal;

(b) exempted goods removedll means the exempted goods manufactured and cleared upto the place of removal;

(c) non-exempted servicesll means the output services excluding exempted services.

~~Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow any one of the following options, as applicable to him, namely :-~~

~~(i) pay an amount equal to six per cent. of value of the exempted goods and exempted services; or~~

~~(ii) pay an amount as determined under sub-rule (3A); or~~

~~(iii) maintain separate accounts for the receipt, consumption and~~

~~inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a) and pay an amount as determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment :-~~

~~**Provided** that if any duty of excise is paid on the exempted goods, the same shall be reduced from the amount payable under clause (i) :-~~

~~**Provided further** that if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be six per cent. of the value so exempted.~~

~~**Provided also** that in case of transportation of goods or passengers by rail the amount required to be paid under clause (i) shall be an amount equal to 2 per cent. of value of the exempted services.~~

~~**Explanation I.**— If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.~~

~~**Explanation II.** For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.~~

~~**Explanation III.**— No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.~~

(3A)

For determination of amount required to be paid under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration number of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;

(iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided ;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of final products or the provider of output service shall determine the credit required to be paid, out of this total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely:-

(i) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;

(ii) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services shall be called eligible credit, denoted as B, and shall not be required to be paid;

(iii) credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as,-

$$C = T - (A + B);$$

Explanation.- Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution.

(iv) the amount of common credit attributable towards exempted goods

removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid, -

$$D = (E/F) \times C;$$

where E is the sum total of –

(a) value of exempted services provided; and

(b) value of exempted goods removed,

during the preceding financial year;

where F is the sum total of-

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed, and

(d) value of exempted goods removed,

during the preceding financial year:

Provided that where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be fifty per cent. of the common credit;

(v) remainder of the common credit shall be called eligible common credit and denoted as G, where,-

$$G = C - D;$$

Explanation.- For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall

provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit.

(vi) where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of fifteen per cent. per annum;

(c) the manufacturer or the provider of output service shall determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year, out of the total credit

denoted as T (Annual) taken during the whole of financial year in the following manner, namely :-

(i) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services on the basis of inputs and input services actually so used during the financial year, shall be called Annual ineligible credit and denoted as A(Annual);

(ii) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services on the basis of inputs and input services actually so used shall be called Annual eligible credit and denoted as B(Annual);

(iii) common credit left for further attribution shall be denoted as C(Annual) and calculated as, -

$$C(\text{Annual}) = T(\text{Annual}) - [A(\text{Annual}) + B(\text{Annual})];$$

(iv) common credit attributable towards exempted goods removed or for provision of exempted services shall be called Annual ineligible common credit, denoted by D(Annual) and shall be calculated as, -

$$D(\text{Annual}) = (H/I) \times C(\text{Annual});$$

where H is sum total of-

(a) value of exempted services provided; and

(b) value of exempted goods removed;

during the financial year ;

where I is sum total of -

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed; and

(d) value of exempted goods removed;

during the financial year;

(d) the manufacturer or the provider of output service shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual



ineligible common credit and the aggregate amount of ineligible credit and ineligible common credit for the period of whole year, namely, [ $A(\text{Annual}) + D(\text{Annual})$ ] -  $\{(A+D) \text{ aggregated for the whole year}\}$ ], where the former of the two amounts is greater than the later;

(e) where the amount under clause (d) is not paid by the 30th June of the succeeding financial year, the manufacturer of goods or the provider of output service, shall, in addition to the amount of credit so paid under clause (d), be liable to pay on such amount an interest at the rate of fifteen per cent. per annum, from the 30th June of the succeeding financial year till the date of payment of such amount;

(f) the manufacturer or the provider of output service, shall at the end of the financial year, take credit of amount equal to difference between the total of the amount of the aggregate of ineligible credit and ineligible common credit paid during the whole year and the total of the amount of annual ineligible credit and annual ineligible common credit, namely, [ $\{(A+D) \text{ aggregated for the whole year}\} - \{A(\text{Annual}) + D(\text{Annual})\}$ ], where the former of the two amounts is greater than the later;

(g) the manufacturer of the goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per the provisions of clauses (d), (e) and (f) , the following particulars, namely :-

(i) details of credit attributed towards eligible credit, ineligible credit, eligible common credit and ineligible common credit, month-wise, for the whole financial year, determined as per the provisions of clause (b);

(ii) CENVAT credit annually attributed to eligible credit, ineligible credit, eligible common credit and ineligible common credit for the whole of financial year, determined as per the provisions of clause (c);

(iii) amount determined and paid as per the provisions of clause (d), if any, with the date of payment of the amount;

(iv) interest payable and paid, if any, determined as per the provisions of clause (e); and

(v) credit determined and taken as per the provisions of clause (f), if any,

~~with the date of taking the credit. For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-~~

~~(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-~~

~~(i) name, address and registration No. of the manufacturer of goods or provider of output service;~~

~~(ii) date from which the option under this clause is exercised or proposed to be exercised;~~

~~(iii) description of dutiable goods or output services;~~

~~(iv) description of exempted goods or exempted services;~~

~~(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;~~

~~(b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month, —~~

~~(i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;~~

~~(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional) =  $(B/C)$  multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;~~

~~(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of exempted services (provisional) =  $(E/F)$  multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;~~

~~(c) — the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely :-~~

~~(i) — the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;~~

~~(ii) — the amount of CENVAT credit attributable to inputs used for provision of exempted services =  $(J/K)$  multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of output services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;~~

~~(iii) — the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance upto the place of removal or provision of exempted services =  $(M/N)$  multiplied by P, where M denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, <sup>1</sup>N denotes total value of output and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and <sup>1</sup>P denotes total CENVAT credit taken on input services during the financial year;~~

~~(d) — the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;~~

~~(e) — the manufacturer of goods or the provider of output service, shall, in addition to the amount short paid, be liable to pay interest at the rate of twenty four per cent. per annum from the due date, i.e., 30th June till the date of payment, where the amount short paid is not paid within the said due date;~~

~~(f) — where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of~~

~~goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;~~

~~(g) — the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely :-~~

~~(i) — details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally as per condition (b);~~

~~(ii) — CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c);~~

~~(iii) — amount short paid determined as per condition (d), alongwith the date of payment of the amount short paid;~~

~~(iv) — interest payable and paid, if any, on the amount short paid, determined as per condition (e), and~~

~~(v) — credit taken on account of excess payment, if any, determined as per condition (f);~~

~~(h) — where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no output service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.~~

~~(i) — where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four per cent. per annum from the due date till the date of payment.~~

**~~Explanation I to III \* \* \*~~**

(3AA) Where a manufacturer or a provider of output service has failed to exercise the option under sub-rule (3) and follow the procedure provided under sub-rule (3A), the Central Excise Officer competent to adjudicate a case based on amount of CENVAT credit involved, may allow such manufacturer or provider of output service to follow the procedure and pay the amount referred to in clause (ii) of sub-rule (3), calculated for each of the months, mutatis-mutandis in terms of clause (c) of sub-rule (3A), with interest calculated at the rate of fifteen per cent. per annum from the due date for payment of amount for each of the month, till the date of payment thereof.

(3AB) Assessee who has opted to pay an amount under clause (ii) or clause (iii) of sub-rule (3) in the financial year 2015-16, shall pay the amount along with interest or take credit for the said financial year in terms of clauses ( c), (d), (e), (f), (g), (h) or (i) of sub-rule (3A), as they prevail on the day of publication of this notification and for this purpose these provisions shall be deemed to be in existence till the 30th June, 2016.

(3B) A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, in addition to options given in sub-rules (1), (2) and (3), shall have the option to pay for every month an amount equal to fifty per cent. of the CENVAT credit availed on inputs and input services in that month. Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances shall pay for every month an amount equal to fifty per cent. of the CENVAT credit availed on inputs and input services in that month.

(3C) \* \* \* \*

(3D) Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

**Explanation I.** - "Value" for the purpose of sub-rules (3) and (3A), —

- (a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;
- (b) in the case of a taxable service, when the option available under sub-rules (7), (7A), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed;
- (c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent. of the cost of goods sold, whichever is more;
- (d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or one per cent. of the purchase price of the securities traded, whichever is more;
- (e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

**Explanation II.** - The amount mentioned in sub-rules (3), (3A) and (3B), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

Explanation III. - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (3), (3A) and (3B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.

Explanation IV. - In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rules (3) and (3A) shall be read respectively as "following quarter" and "quarter ending with the month of March".

(4)

No CENVAT credit shall be allowed on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be, other than the final products or output services which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made or services provided in a financial year:

Provided that where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years shall be computed from the date of installation of such capital goods ~~No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year.~~

(5) \* \* \*

(6) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either -

- (i) cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorised operations; or
- (ii) cleared to a hundred per cent. export-oriented undertaking; or
- (iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
- (iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of

India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, number G.S.R. 602 (E), dated the 28th August, 1995; or

- (iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of Notification No. 12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated the 17th March, 2012; or
- (v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or
- (vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting; or
- (vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, —
  - (a) against International Competitive Bidding; or
  - (b) to a power project from which power supply has been tied up through tariff based competitive bidding; or
  - (c) to a power project awarded to a developer through tariff based competitive bidding,

in terms of Notification No. 12/2012-Central Excise, dated the 17th March, 2012;

(viii) supplies made for setting up of solar power generation projects or facilities.

(7) The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a unit in a Special Economic Zone or to a developer of a Special Economic Zone for their authorised operations or when a service is exported or when a service is provided or agreed to be provided by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India<sup>298</sup>.

(8) For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when :-

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<sup>298</sup> [Inserted vide Notification No. 13/2016 – CE\(NT\) w.e.f. 01.03.2016](#)



- (a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and
- (b) such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision.

Provided that if such payment is received after the specified or extended period allowed by the Reserve Bank of India but within one year from such period, the service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier in terms of sub rule (3) to the extent it relates to such payment, on the basis of documentary evidence of the payment so received<sup>299</sup>

### **7. Manner of distribution of credit by input service distributor <sup>300</sup>**

The input service distributor shall distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service or an outsourced manufacturing units, as defined in Explanation 4, subject to the following conditions, namely :—

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b) the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit;

(c) the credit of service tax attributable as input service to more than one unit but not to all the units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be pro rata on the basis of the turnover of such units, during the relevant period, to the total turnover of all such units to which such input service is attributable and which are operational in the current year, during the said relevant period;

(d) the credit of service tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are

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<sup>299</sup> Inserted from 11 July 2014 vide Not. No. 21/2014-CE (NT)

<sup>300</sup> Substituted vide Notification No. 13/2016 – CE(NT) w.e.f. 01.04.2016

operational in the current year, during the said relevant period;

(e) outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned;

(f) credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit and such credit shall be distributed amongst the units excluding the outsourced manufacturing units.

Explanation.-The provision of this clause shall, mutatis-mutandis, apply to any outsourced manufacturer commencing production of goods on or after the 1st of April, 2016;

(g) provisions of rule 6 shall apply to the units manufacturing goods or provider of output service and shall not apply to the input service distributor.

Explanation 1.- For the purposes of this rule, 'unit' includes the premises of a provider of output service or the premises of a manufacturer including the factory, whether registered or otherwise or the premises of an outsourced manufacturing unit.

Explanation 2.-For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5:

Provided that the turnover of an outsourced manufacturing unit shall be the turnover of goods manufactured by such outsourced manufacturing unit for the input service distributor.

Explanation 3.- For the purposes of this rule, the 'relevant period' shall be, -

(a) if the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case maybe,

the said financial year; or;

(b) if the assessee does not have turn over for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.

Explanation 4.— For the purposes of this rule, 'outsourced manufacturing unit' means a job-worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the goods manufactured for the input service distributor or a manufacturer who manufactures goods, for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Excise Act. The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely :—

- (a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;
- (b) credit of service tax attributable to service used by one or more units exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;
- (c) credit of service tax attributable to service used wholly by a unit shall be distributed only to that unit; and
- (d) credit of service tax attributable to service used by more than one unit shall be distributed *pro rata* on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period.

**Explanation 1.**— For the purposes of this rule, "unit" includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

**Explanation 2.**— For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.

**Explanation 3.**— For the purposes of this rule, the 'relevant period' shall

be,

- (a) ~~If the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year; or~~
- (b) ~~If the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.~~

#### **7A. Distribution of credit on inputs by the office or any other premises of output service provider**

(1) A provider of output service shall be allowed to take credit on inputs and capital goods received, on the basis of an invoice or a bill or a challan issued by an office or premises of the said provider of output service, which receives invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of inputs and capital goods.

(2) The provisions of these rules or any other rules made under the Central Excise Act, 1944, as made applicable to a first stage dealer or a second stage dealer, shall *mutatis mutandis* apply to such office or premises of the provider of output service.

#### **7B Distribution of credit on inputs by warehouse of manufacturer. -**

(1) A manufacturer having one or more factories, shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, who receives inputs under cover of invoices, issued in terms of the provisions of the Central Excise Rules, 2002, towards the purchase of such inputs.

(2) The provisions of these rules or any other rules made under the Excise Act as applicable to a first stage dealer or a second stage dealer, shall, mutatis mutandis, apply to such warehouse of the manufacturer.<sup>301</sup>

#### **8. Storage of input outside the factory of the manufacturer**

The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of a

<sup>301</sup> Inserted vide Notification No. 13/2016 – CE(NT) w.e.f. 01.04.2016

manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the input in respect of which CENVAT credit has been taken, outside such factory, subject to such limitations and conditions as he may specify :

**Provided** that where such input is not used in the manner specified in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such input.

## **9. Documents and accounts**

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by -

(i) [a manufacturer or a service provider for clearance of a manufacturer for clearance of](#) <sup>-302</sup>

(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise

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<sup>302</sup> [Inserted vide Notification No. 13/2016 – CE\(NT\) w.e.f. 01.04.2016](#)

duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made thereunder with intent to evade payment of duty.

**Explanation.** - For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

- (bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or
- (c) a bill of entry; or
- (d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or
- (e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or
- (f) an invoice<sup>303</sup>, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004; or
- (g) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994 :

**Provided** that the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears

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<sup>303</sup> Debit notes containing the information like the service provider's name and address, service tax registration number, nature of service provided, value and service tax paid are valid documents for availing CENVAT Credit as held by the Tribunal in a number of judgments [**2013-TIOL-836-CESTAT-DEL**]

an indication to the effect that no credit of the said additional duty shall be admissible.

(2) No CENVAT credit under sub-rule (1) shall be taken unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document :

**Provided** that if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable service, assessable value, Central Excise or Service tax registration number of the person issuing the invoice, as the case may be, name and address of the factory or warehouse or premises of first or second stage dealers or provider of output service, and the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, is satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver, he may allow the CENVAT credit.

(3) \* \* \* \*

(4) The CENVAT credit in respect of input or capital goods purchased from a first stage dealer or second stage dealer shall be allowed only if such first stage dealer or second stage dealer, as the case may be, has maintained records indicating the fact that the input or capital goods was supplied from the stock on which duty was paid by the producer of such input or capital goods and only an amount of such duty on *pro rata* basis has been indicated in the invoice issued by him.

Provided that provisions of this sub-rule shall apply mutatis mutandis to an importer who issues an invoice on which CENVAT credit can be taken

(5) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the input and capital goods in which the relevant information regarding the value, duty paid, CENVAT credit taken and utilized, the person from whom the input or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value, tax paid, CENVAT

credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(7) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board :

**Provided** that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified, by notification, by the Board within ten days after the close of the quarter to which the return relates.

(8) A first stage dealer or a second stage dealer or a registered importer<sup>304</sup>, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified, by notification, by the Board<sup>305</sup>:

**Provided** that the first stage dealer or second stage dealer or a registered importer<sup>306</sup>, as the case may be, shall submit the said return electronically.

(9) The provider of output service availing CENVAT credit, shall submit a half yearly return in form specified, by notification, by the Board to the Superintendent of Central Excise, by the end of the month following the particular quarter or half year.

(10) The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by the Board, giving the details of credit received and distributed during the said half year to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.

(11) The provider of output service, availing CENVAT credit referred to in sub-rule (9) or the input service distributor referred to in sub-rule (10), as the case may be, may submit a revised return to correct a mistake or omission within a period of sixty days from the date of submission of the return under sub-rule (9) or sub-rule (10), as the case may be.

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<sup>304</sup> Inserted vide Not. No. 09/2014-CE (NT) dated 28.02.2014

<sup>305</sup> Quarterly Return provided through Not. No. 11/2014-CE (N.T.)

<sup>306</sup> Inserted vide Not. No. 09/2014-CE (NT) dated 28.02.2014



## 9A. Information relating to principal inputs

(1) ~~A manufacturer of final products or provider of output services, shall submit to the Superintendent of Central Excise an annual return for each financial year, by the 30th day of November of the succeeding year, in the form as specified by a notification by the Board<sup>307</sup>A manufacturer of final products shall furnish to the Superintendent of Central Excise, annually by 30th April of each Financial Year, a declaration in the Form specified, by a notification, by the Board, in respect of each of the excisable goods manufactured or to be manufactured by him, the principal inputs and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products :~~

~~Provided that for the year 2004-05, such information shall be furnished latest by 31st December, 2004 :~~

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(2) ~~The provisions of rule 12 of the Central Excise Rules, 2002, in so far as they relate to annual return shall, mutatis-mutandis, apply to the annual return required to be filed under this rule.<sup>308</sup>If a manufacturer of final products intends to make any alteration in the information so furnished under sub-rule (1), he shall furnish information to the Superintendent of Central Excise together with the reasons for such alteration before the proposed change or within 15 days of such change in the Form specified by the Board under sub-rule (1).~~

(3) A manufacturer of final products shall submit, within ten days from the close of each month, to the Superintendent of Central Excise, a monthly return in the Form specified, by a notification, by the Board, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him :

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(4) The Central Government may, by notification and subject to such conditions or limitations, as may be specified in such notification, specify manufacturers or class of manufacturers who may not be required to furnish declaration mentioned in sub-rule (1) or monthly return mentioned in sub-rule (3).

(5) Every assessee shall file electronically, the declaration or the return, as the case may be, specified in this rule.

<sup>307</sup> Substituted vide Notification No. 13/2016 – CE(NT) w.e.f. 01.04.2016

<sup>308</sup> Substituted vide Notification No. 13/2016 – CE(NT) w.e.f. 01.04.2016

**Explanation.** - For the purposes of this rule, "principal inputs", means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw materials for the manufacture of unit quantity of a given final products.

#### **10. Transfer of CENVAT credit**

- (1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.
- (2) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.
- (3) The transfer of the CENVAT credit under sub-rules (1) and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

#### **10A. Transfer of CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act**

- (1) A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961 (43 of 1961), may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at

the end of a quarter, to his other registered premises by—

- (i) making an entry for such transfer in the documents maintained under rule 9;
- (ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises may take CENVAT credit on the basis of the transfer challan :

**Provided** that nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely :-

- (i) No. 32/99-Central Excise, dated the 8th July, 1999 G.S.R. 508(E), dated the 8th July, 1999;
- (ii) No. 33/99-Central Excise, dated the 8th July, 1999 G.S.R. 509(E), dated the 8th July, 1999;
- (iii) No. 39/2001-Central Excise, dated the 31st July, 2001 G.S.R. 565(E), dated the 31st July, 2001;
- (iv) No. 56/2002-Central Excise, dated the 14th November, 2002 G.S.R. 764(E), dated the 14th November, 2002;
- (v) No. 57/2002-Central Excise, dated the 14th November, 2002 G.S.R. 765(E), dated the 14th November, 2002;
- (vi) No. 56/2003-Central Excise, dated the 25th June, 2003 G.S.R. 513(E), dated the 25th June, 2003;
- (vii) No. 71/2003-Central Excise, dated the 9th September, 2003 G.S.R. 717(E), dated the 9th September, 2003;
- (viii) No. 20/2007-Central Excise, dated the 25th April, 2007 G.S.R. 307(E), dated the 25th April, 2007; and
- (ix) No. 1/2010-Central Excise, dated the 6th February, 2010 G.S.R. 62(E), dated the 6th February, 2010.

(2) The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.

## **11. Transitional provision**

(1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the 10th day of September, 2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the 10th day of September, 2004, and remaining unutilized on that day shall be allowed as CENVAT credit to such manufacturer or provider of output service under these rules, and be allowed to be utilized in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if, -

- (i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or
- (ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported.

(4) A provider of output service shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for providing the said service and is lying in stock or is contained in the taxable service pending to be provided, when he opts for exemption from

payment of whole of the service tax leviable on such taxable service under a notification issued under section 93 of the Finance Act, 1994 (32 of 1994) and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export or for payment of service tax on any other output service, whether provided in India or exported.

## **12. Special dispensation**

### **In respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim.**

—Notwithstanding anything contained in these rules, but subject to the proviso to clause (i) of sub-rule (1) of Rule 3, where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99-Central Excise, dated the 8th July, 1999 G.S.R. 508(E), dated the 8th July, 1999 or No. 33/99-Central Excise, dated the 8th July, 1999 G.S.R. 509(E), dated the 8th July, 1999 or No. 39/2001-Central Excise, dated the 31st July, 2001 G.S.R. 565(E), dated the 31st July, 2001 or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 56/2002-Central Excise, dated the 14th November, 2002 G.S.R. 764(E), dated 14th November, 2002 or No. 57/2002-Central Excise, dated the 14th November, 2002 GSR 765(E), dated the 14th November, 2002 or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated the 25th June, 2003 G.S.R. 513(E), dated the 25th June, 2003 or 71/2003-Central Excise, dated the 9th September, 2003 G.S.R. 717(E), dated the 9th September, 2003, or No. 20/2007-Central Excise, dated the 25th April, 2007 GSR 307(E), dated the 25th April, 2007 or No.1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010]<sup>309</sup> the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.

### **12A. Procedure and facilities for large tax payer**

Notwithstanding anything contained in these rules, the following procedure shall

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<sup>309</sup> Inserted vide Not. No. 2/2014-CE (NT) dated 20.01.2014

apply to a large tax payer, -

(1) A large tax payer may remove inputs, except motor spirit, commonly known as petrol, high speed diesel and light diesel oil or capital goods, as such, on which CENVAT credit has been taken, without payment of an amount specified in sub-rule (5) of rule 3 of these rules, under the cover of a transfer challan or invoice, from any of his registered premises (hereinafter referred to as the sender premises) to his other registered premises, other than a premises of a first or second stage dealer (hereinafter referred to as the recipient premises), for further use in the manufacture or production of final products in recipient premises subject to condition that -

- (a) the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon within a period of six months, from the date of receipt of the inputs in the recipient premises; or
- (b) the final products are manufactured or produced using the said inputs and exported out of India, under bond or letter of undertaking within a period of six months, from the date of receipt of the input goods in the recipient premises,

and that any other conditions prescribed by the Commissioner of Central Excise, Large Tax payer Unit in this regard are satisfied.

**Explanation 1.** — The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large tax payer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee :

**Provided** that if the final products manufactured or produced using the said inputs are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of six months from the date of receipt of the input goods in the recipient premises, or such inputs are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such inputs by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

**Provided** further that if such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from

the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

**Explanation 2.** — If a large tax payer fails to pay any amount due in terms of the first and second provisos, it shall be recovered along with interest in the manner as provided under rule 14 of these rules :

**Provided** also that nothing contained in this sub-rule shall be applicable if the recipient premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

- (i) No. 32/99-C.E., dated the 8th July, 1999 G.S.R. 508(E), dated the 8th July, 1999;
- (ii) No. 33/99-C.E., dated the 8th July, 1999 G.S.R. 509(E), dated the 8th July, 1999;
- (iii) No. 39/2001-C.E., dated the 31st July, 2001 G.S.R. 565(E), dated the 31st July, 2001;
- (iv) No. 56/2002-C.E., dated the 14th November, 2002 G.S.R. 764(E), dated the 14th November, 2002;
- (v) No. 57/2002-C.E., dated 14th November, 2002 G.S.R.. 765(E), dated the 14th November, 2002;
- (vi) No. 56/2003-C.E., dated the 25th June, 2003 G.S.R. 513(E), dated the 25th June, 2003;
- (vii) No. 71/2003-C.E., dated the 9th September, 2003 G.S.R. 717(E), dated the 9th September, 2003; \* \* \*
- (viii) No. 20/2007-C.E., dated the 25th April, 2007 GSR 307(E), dated the 25th April, 2007, and
- (ix) No. 1/2010-Central Excise, dated the 6th February, 2010 G.S.R. 62(E), dated the 6th February, 2010 :

**Provided** also that nothing contained in this sub-rule shall be applicable to an export-oriented unit or a unit located in a Electronic Hardware Technology Park or Software Technology Park.

(2) The first recipient premises may take CENVAT credit of the amount paid under first proviso to sub-rule (1) as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties.

(3) CENVAT credit of the specified duties taken by a sender premises shall not be denied or varied in respect of any inputs or capital goods, -

- (a) removed as such under sub-rule (1) on the ground that the said inputs or the capital goods have been removed without payment of an amount specified in sub-rule (5) of rule 3 of these rules; or
- (b) on the ground that the said inputs or capital goods have been used in the manufacture of any intermediate goods removed without payment of duty under sub-rule (1) of rule 12BB of Central Excise Rules, 2002.

**Explanation.** - For the purpose of this sub-rule "intermediate goods" shall have the same meaning assigned to it in sub-rule (1) of rule 12BB of the Central Excise Rules, 2002.

(4) A large tax payer may transfer, CENVAT credit taken, on or before the 10<sup>th</sup> July, 2014, by one of his registered manufacturing premises<sup>310</sup> or premises providing taxable service to his other such registered premises by, -

- (i) making an entry for such transfer in the record maintained under rule 9;
- (ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii) :

**Provided** that such transfer or utilisation of CENVAT credit shall be subject to the limitations prescribed under clause (b) of sub-rule (7) of rule 3 :

**Provided further** that nothing contained in this sub-rule shall be applicable if the registered manufacturing premises is availing following notifications of Government of India in the Ministry of Finance (Department of Revenue), -

- (i) No. 32/99-C.E., dated the 8th July, 1999 G.S.R. 508(E), dated the 8th July, 1999;
- (ii) No. 33/99-C.E., dated the 8th July, 1999 G.S.R. 509(E), dated the 8th July, 1999;
- (iii) No. 39/2001-C.E., dated the 31st July, 2001 G.S.R. 565(E), dated the

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<sup>310</sup> Substituted from 11 July 2014 vide Not. No. 21/2014-CE (NT)



31st July, 2001;

(iv) No. 56/2002-C.E., dated the 14th November, 2002 G.S.R. 764(E), dated the 14th November, 2002;

(v) No. 57/2002-C.E., dated 14th November, 2002 G.S.R.. 765(E), dated the 14th November, 2002;

(vi) No. 56/2003-C.E., dated the 25th June, 2003 G.S.R. 513(E), dated the 25th June, 2003;

(vii) No. 71/2003-C.E., dated the 9th September, 2003 G.S.R. 717(E), dated the 9th September, 2003; \* \* \*

(viii) No. 20/2007-C.E., dated the 25th April, 2007 GSR 307(E), dated the 25th April, 2007 and

(ix) No. 1/2010-Central Excise, dated the 6th February, 2010 G.S.R. 62(E), dated the 6th February, 2010.

(5) A large tax payer shall submit a monthly return, as prescribed under these rules, for each of the registered premises.

(6) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Tax payer Unit, shall be deemed to have been issued by Central Excise officers of the said Unit.

(7) Provisions of these rules, insofar as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large tax payer.

### **12AAA. Power to impose restrictions in certain types of cases**

*<sup>311</sup>Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, an importer or, first stage and second stage dealer or an exporter, may by notification in the Official Gazette, specify the nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of a dealer and type of facilities to be withdrawn and procedure for issue of such order by the Chief Commissioner of Central Excise.*

*Explanation.- For the purposes of this rule, it is hereby clarified that every proposal initiated in terms of the procedure specified under notification no.05/2012-CE (N.T.) dated the 12th March, 2012 published in the Gazette of India, Part II, Section 3, Sub-*

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<sup>311</sup> Inserted vide Not. No. 15/2014-CE (NT) dated 21.03.2014

*section (i) vide number G.S.R. 140(E), dated the 12th March, 2012, which is pending, shall be treated as initiated in terms of the procedure specified under this rule and shall be decided accordingly*

### **13. Power of Central Government to notify goods for deemed CENVAT credit**

Notwithstanding anything contained in rule 3, the Central Government may, by notification, declare the input or input service on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in that notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in that notification even if, in the case of input, the declared input, or in the case of input service, the declared input service, as the case may be, is not used directly by the manufacturer of final products, or as the case may be, by the provider of output service, declared in that notification, but contained in the said final products, or as the case may be, used in providing the output service.

### **14. Recovery of CENVAT credit wrongly taken or erroneously refunded**

(1) (i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply mutatis mutandis for effecting such recoveries;

(ii) Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries <sup>312</sup>

~~(2) For the purposes of sub-rule (1), all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the following manner, namely:—~~

~~(i) the opening balance of the month has been utilised first;~~

<sup>312</sup> Substituted by Not. No. 6/2015-CE (NT) w.e.f. 01.03.2015

~~(ii) credit admissible in terms of these rules taken during the month has been utilised next;~~

~~(iii) credit inadmissible in terms of these rules taken during the month has been utilised thereafter<sup>313</sup>~~

### **15. Confiscation and penalty**

(1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty in terms of clause (a) or clause (b) of sub-section (1) of section 11AC of the Excise Act or sub-section (1) of section 76 of the Finance Act (32 of 1994), as the case may be<sup>314</sup>

(2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made thereunder with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of clause (c), clause (d) or clause (e) of sub-section (1) of section 11AC of the Excise Act<sup>315</sup> of the Excise Act.

(3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of section 78 of the Finance Act.

(4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3) shall be issued by the Central Excise Officer following the principles of natural justice.

### **15A. General penalty**

Whoever contravenes the provisions of these rules for which no penalty has been provided in the rules, he shall be liable to a penalty which may extend to five thousand rupees.

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<sup>313</sup> Deleted vide Notification No. 13/2016 – CE(NT) w.e.f. 01.04.2016

<sup>314</sup> Substituted by Not. No. 6/2015-CE (NT) w.e.f. 01.03.2015

<sup>315</sup> Substituted by Not. No. 6/2015-CE (NT) w.e.f. 01.03.2015

## **16. Supplementary provision**

(1) Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or the Service Tax Credit Rules, 2002, by the Central Government, the Central Board of Excise and Customs, the Chief Commissioner of Central Excise or the Commissioner of Central Excise, and in force at the commencement of these rules, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.

[(2) References in any rule, notification, circular, instruction, standing order, trade notice or other order to the CENVAT Credit Rules, 2002 and any provision thereof or, as the case may be, the Service Tax Credit Rules, 2002 and any provision thereof shall, on the commencement of these rules, be construed as references to the CENVAT Credit Rules, 2004 and any corresponding provision thereof.]

## 11. SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013

### <sup>316</sup>CHAPTER VI

#### SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013

##### **Short Title**

**104.** This Scheme may be called the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

##### **Definitions**

**105.** (1) In this Scheme, unless the context otherwise requires,—

- (a) "Chapter" means Chapter V of the Finance Act, 1994;
  - (b) "declarant" means any person who makes a declaration under sub-section (1) of section 107;
  - (c) "designated authority" means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;
  - (d) "prescribed" means prescribed by rules made under this Scheme;
  - (e) "tax dues" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 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) Words and expressions used herein and not defined but defined in the Chapter or the rules made thereunder shall have the meanings respectively assigned to them in the Chapter or the rules made thereunder.

##### **Person who may make declaration of tax dues**

**106.** (1) 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 1<sup>st</sup> day of March, 2013:

Provided that 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:

Provided further that 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.

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<sup>316</sup> Effective from 10 May 2013

- (2) 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<sup>317</sup>.

### **Procedure for making declaration and payment of tax dues**

- 107.** (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.
- (2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.
- (3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent. Of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.
- (4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

Provided that where the declarant fails to pay said tax dues or part thereof on or before the said date, he 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.

- (5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.
- (6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).

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<sup>317</sup> ST, VCES, 2013 is part and parcel of the Finance Act, 1994, by virtue of the Finance Act, 2013, thus order of rejection by the designated authority viz. Deputy Commissioner of CE & ST is appealable under section 86 of the FA, 1994 – Barnala Builders & Property Consultants 2013-VCESI-003-HC-P&H

- (7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4) the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

### **Immunity from penalty, interest and other proceeding**

**108.** (1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.

- (2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

### **No refund of amount paid under scheme**

**109.** Any amount paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any circumstances.

### **Tax dues declared but not paid**

**110.** Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues alongwith interest thereon shall be recovered under the provisions of section 87 of the Chapter.

### **Failure to make true declaration**

**111.** (1) 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.

- (2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.
- (3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

### **Removal of doubts**

**112.** For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 108.

### **Power to remove difficulties**

**113.** (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

### **Power to make rules**

**114.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and the manner in which a declaration may be made under sub-section (1) of section 107

(b) the form and the manner of acknowledging the declaration under sub-section (2) of section 107;

(c) the form and the manner of issuing the acknowledgement of discharge of tax dues under sub-section (7) of section 107;

(d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.



## 12. Service Tax Voluntary Compliance Encouragement Rules, 2013

### NOTIFICATION NO

**10/2013-ST, Dated: May 13, 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<sup>318</sup>.

## 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)*

<b>1.</b>	<b>Name of the declarant</b>	
<b>2</b>	<b>Address of the declarant</b>	
<b>3</b>	<b>Telephone No.</b>	
<b>4</b>	<b>E-mail id</b>	
<b>5</b>	<b>Service Tax Code (STC No.)</b>	
<b>6</b>	<b>Details of tax dues*</b>	
	<b>A</b> <b>Service tax</b>	₹

<sup>318</sup> VCES does not permit utilisation of CENVAT for payment of Service Tax under VCES scheme. However, as regards availability of Service Tax paid in cash say under Reverse Charge Mechanism, the same would be available. In this regard, the assessee can take recourse to the judgment of the Larger Bench in the case of Bosch Chassis System India Ltd (**2008-TIOL-1764-CESTAT-DEL-LB**) wherein it was held that in case the assessee pays differential duty on receipt of show cause notice and taking recourse to **Settlement Scheme** then it does not mean admission of fraud by assessee. The Larger Bench observed that whether fraud was committed by assessee or not is a question of fact to be decided basis appreciation of facts of each case. Thus, Rule 9(1)(bb) of CCR will not be applicable by de-fault. Further, it is pertinent to note that as regards, Rule 9 (1) (e) of CCR there are no restrictions similar to 9 (1) (bb). Thus, in scenario where assessee pays Service Tax under Reverse Charge Mechanism by availing VCES, *per-se* denial will not be applicable

<b>B</b>	<b>Education cess</b>	₹	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
<b>C</b>	<b>Secondary &amp; Higher Education Cess</b>	₹	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
<b>D</b>	<b>Amount under section 73A of the Finance Act,1994</b>	₹	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
<b>E</b>	<b>Total Tax dues* [A+B+C+D]</b>	₹	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

\*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 1<sup>st</sup> 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.**

*(To be assigned by the department)*

**Date**

**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](http://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 31<sup>st</sup> Dec, 2013 (50% of the tax dues) ₹

**B** Remaining tax dues to be paid on or before the 30<sup>th</sup> June, 2014 [Amount at S. No. 5(-)Amount at S. No. 6A] ₹

**C** Any tax dues remaining unpaid as on 1<sup>st</sup> day of July, 2014 shall be paid before the 31<sup>st</sup> December, 2014 along with interest, as prescribed under section 75 or as the case may be, section 73B of the Finance Act, 1994 for the period of delay

starting from the 1<sup>st</sup> day of July,2014.

Signature, name and seal of designated authority

Place:

Date:

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**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



## 13. Notifications

### 14/2012 - RESEARCH & DEVELOPMENT CESS

**Notification No. 14/2012-S.T.**

**Dated 17-3-2012**

#### **Import of technology – Exemption from Service tax equal to Cess payable**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service involving import of technology, from so much of the service tax leviable thereon under section 66B of the said Act, as is equivalent to the amount of cess payable on the said import of technology under the provisions of section 3 of the Research and Development Cess Act, 1986 (32 of 1986), subject to the following conditions, namely :-

- (a) that the said amount of Research and Development Cess is paid within six months from the date of invoice or in case of associated enterprises, the date of credit in the books of account :  
Provided that the exemption shall be available only if the Research and Development Cess is paid at the time or before the payment for the service;
- (b) that the records of Research and Development Cess are maintained for establishing the linkage between the invoice or the credit entry, as the case may be, and the Research and Development Cess payment challan.

2. This notification shall come into force from the date on which section 66B of the Finance Act, 1994 comes into effect.

## **25/2012 MEGA EXEMPTION NOTIFICATION**

### **Notification No. 25/2012-Service Tax**

New Delhi, the 20<sup>th</sup> June, 2012

G.S.R.....(E).- 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 17<sup>th</sup> 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 17<sup>th</sup> 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. (i) Health care services by a clinical establishment, an authorised medical practitioner or para-medics;  
(ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above<sup>319</sup>
- 2B. Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto<sup>320</sup>
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

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<sup>319</sup> Inserted by Not. No. 6/2015-ST w.e.f 01.04.2015

<sup>320</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014



(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;

<sup>321</sup>(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, 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 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 senior advocate by way of legal services to a person other than a person ordinarily carrying out any activity relating to industry, commerce or any other business or professional person represented on an arbitral tribunal to an arbitral tribunal<sup>322</sup>;

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8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

<sup>324</sup>9. Services provided,-

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of,-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

<sup>321</sup> Substituted vide Notification No. 9/2016-ST w.ef. 01.04.2016

<sup>322</sup> Substituted vide Notification No. 9/2016-ST w.ef. 01.04.2016

<sup>323</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

<sup>324</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

(iv) services relating to admission to, or conduct of examination by, such institution

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~~(a)~~<sup>326</sup>;

~~(b)~~;

<sup>327</sup>9A. Any services provided by, \_

- (i) the National Skill Development Corporation set up by the Government of India;
- (ii) a Sector Skill Council approved by the National Skill Development Corporation;
- (iii) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
- (iv) a training partner approved by the National Skill Development Corporation or the Sector Skill Council

in relation to

- (a) the National Skill Development Programme implemented by the National Skill Development Corporation; or
- (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
- (c) any other Scheme implemented by the National Skill Development Corporation

9B. Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme, -

(a) two year full time residential Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by Indian Institute of Management;

(b) fellow programme in Management;

(c) five year integrated programme in Management

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<sup>325</sup> Applicable wef 1 April 2013 vide Not. No. 3/2013-ST dated 1 March 2013

<sup>326</sup> Refer Circular No. 172/7/2013 – ST dated 19 September 2013 for clarification on services availed by an education institute

<sup>327</sup> Inserted vide Not. No. 13/2013-ST dated 10 September 2013

[9C Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under Skill Development Initiative \(SDI\) Scheme<sup>329</sup>](#)

[9D Services provided by training providers \(Project implementation agencies\) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by National Council For Vocational Training<sup>330</sup>](#)

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, zone or Country<sup>331</sup>;
- (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 Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;

<sup>328</sup> [Inserted vide Notification No. 9/2016-ST w.e.f. 01.03.2016](#)

<sup>329</sup> [Inserted vide Notification No. 9/2016-ST w.e.f. 01.04.2016](#)

<sup>330</sup> [Inserted vide Notification No. 9/2016-ST w.e.f. 01.04.2016](#)

<sup>331</sup> Amended vide Not. No. 1/2014-ST dated 10.1.2014

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 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);

(b) canal, dam or other irrigation works;

(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

12A. 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 structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date

Provided that nothing contained in this entry shall apply on or after the 1st

April, 2020<sup>332</sup>

**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;

(ba) a civil structure or any other original works pertaining to the 'In-situ rehabilitation of existing slum dwellers using land as a resource through private participation' under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers<sup>333</sup>

(bb) a civil structure or any other original works pertaining to the 'Beneficiary led individual house construction / enhancement under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana'<sup>334</sup>

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

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or

(e) 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) railways, excluding monorail and metro<sup>335</sup> ~~an railways, including monorail or metro;~~

<sup>332</sup> Restored vide Notification No. 9/2016-ST w.e.f. 01.03.2016

<sup>333</sup> Inserted vide Notification No. 9/2016-ST w.e.f. 01.03.2016

<sup>334</sup> Inserted vide Notification No. 9/2016-ST w.e.f. 01.03.2016

<sup>335</sup> Substituted by Not. No. 9/2016-ST w.e.f. 01.03.2016

Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt<sup>336</sup>

(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;

<sup>337</sup>(ca) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:

(i) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;

(ii) any housing scheme of a State Government.

(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;

<sup>338</sup>14A. Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port provided under a contract which had been entered into prior to 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

Provided that Ministry of Civil Aviation or the Ministry of Shipping in the Government of India, as the case may be, certifies that the contract had been entered into before the 1st March, 2015:

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<sup>336</sup> Inserted by Not. No. 9/2016-ST w.e.f. 01.03.2016

<sup>337</sup> Inserted by Not. No. 9/2016-ST w.e.f. 01.03.2016

<sup>338</sup> Inserted by Not. No. 9/2016-ST w.e.f. 01.03.2016

Provided further that nothing contained in this entry shall apply on or after the 1st April, 2020

~~15 Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films~~

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<sup>339</sup>

16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is not more than one lakh one lakh fifty thousand<sup>340</sup> rupees

Provided that the exemption shall not apply to service provided by such artist as a brand ambassador<sup>341</sup>

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 a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent<sup>342</sup>

<sup>339</sup> Applicable wef 1 April 2013 vide Not. No. 3/2013-ST dated 1 March 2013

<sup>340</sup> Substituted vide Notification No. 9/2016-ST w.e.f. 01.04.2016

<sup>341</sup> Amended by Not. No.6/2015-ST w.e.f. 01.04.2015

<sup>342</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

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 and ~~(ii) a licence to serve alcoholic beverages;~~<sup>343</sup>

<sup>344</sup>19A. Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year

20. <sup>345</sup>Services by way of transportation by rail or a vessel from one place in India to another of the following goods -

(a) ~~petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);~~

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

(c) defence or military equipments;

~~(d) postal mail or mail bags;~~

~~(e) household effects;~~

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

(g) railway equipments or materials;

(h) agricultural produce;

(i) milk, salt and food grain including flours, pulses and rice<sup>346</sup>

(j) chemical fertilizer, organic manure<sup>347</sup> and oilcakes;

(k) cotton, ginned or baled<sup>348</sup>

21. <sup>349</sup>Services provided by a goods transport agency, by way of transport in a goods carriage of,-

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<sup>343</sup> Applicable wef 1 April 2013 vide Not. No. 3/2013-ST dated 1 March 2013

<sup>344</sup> Not. No. 14/2013-ST dated 22.10.2013

<sup>345</sup> Applicable wef 1 April 2013 vide Not. No. 3/2013-ST dated 1 March 2013

<sup>346</sup> Substituted by Not. No. 6/2015-ST w.e.f. 01.04.2015

<sup>347</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

<sup>348</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014



- (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) milk, salt and food grain including flours, pulses and rice<sup>350</sup>
- (e) chemical fertilizer, organic manure<sup>351</sup> 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
- (i) cotton, ginned or baled<sup>352</sup>

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 -

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<sup>349</sup> Applicable wef 1 April 2013 vide Not. No. 3/2013-ST dated 1 March 2013

<sup>350</sup> Substituted by Not. No. 6/2015-ST

<sup>351</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

<sup>352</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

(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)<sup>353</sup> non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(bb) stage carriage other than air-conditioned stage carriage<sup>354</sup>

(b)(c)<sup>355</sup> ropeway, cable car or aerial tramway;

~~<sup>356</sup>24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;~~

25. Services provided to Government, a local authority or a governmental authority by way of -

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or<sup>357</sup> or

(b) repair or maintenance of a vessel ~~or an aircraft~~<sup>358</sup>;

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;

<sup>353</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

<sup>354</sup> [Vide Not. No. 9/2016-ST w.ef. 01.06.2016](#)

<sup>355</sup> [Deleted vide Nt. No. 9/2016-ST w.e.f. 01.04.2016](#)

<sup>356</sup> Omitted wef 1 April 2013 vide Not. No. 3/2013-ST dated 1 March 2013

<sup>357</sup> Inserted vide Not. No. 6/2014-ST WEF 11 July 2014

<sup>358</sup> Omitted wef 1 April 2013 vide Not. No. 3/2013-ST dated 1 March 2013

- (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;

(p) Pradhan Mantri Suraksha Bima Yojna<sup>359</sup>

~~(p)~~(q) Niramaya" Health Insurance Scheme implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)<sup>360</sup>

<sup>361</sup>**26A. Services of life insurance business provided under following schemes -**

- (a) Janashree Bima Yojana (JBY); or
- (b) Aam Aadmi Bima Yojana (AABY);
- (c) life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees<sup>362</sup>
- (d) Varishtha Pension Bima Yojana<sup>363</sup>
- (e) Pradhan Mantri Jeevan Jyoti Bima Yojana;
- (f) Pradhan Mantri Jan Dhan Yojana<sup>364</sup>

**26B. Services by way of collection of contribution under Atal Pension Yojana<sup>365</sup>**

<sup>359</sup> Inserted by Not. No. 12/2015-ST

<sup>360</sup> [Vide Not. No. 9/2016-ST w.ef. 01.04.2016](#)

<sup>361</sup> Inserted vide Not. No. 49/2012-ST dated 24.12.2012

<sup>362</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

<sup>363</sup> Inserted by Not. No. 6/2015-ST

<sup>364</sup> Inserted by Not. No. 12/2015-ST

<sup>365</sup> Inserted by Not. No. 12/2015-ST

[26C Services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India \(PFRDA\) under the Pension Fund Regulatory And Development Authority Act, 2013 \(23 of 2013\)](#)<sup>366</sup>

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 -

(b) sub-broker or an authorised person to a stock broker;

(c) authorised person to a member of a commodity exchange;

(d) <sup>367</sup>

(e) selling agent or a distributor of SIM cards or recharge coupon vouchers;

(f) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or

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<sup>366</sup> [Inserted vide Notification No. 9/2016-ST w.e.f. 01.04.2016](#)

<sup>367</sup> Omitted by Not. No. 6/2015-ST w.e.f.01.04.2015

- (g) 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 excluding alcoholic liquors for human consumption<sup>368</sup> 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.
33. Services by way of slaughtering of bovine 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;

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<sup>368</sup> Amended by Not. No.6/2015-ST

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.
- [40. Services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled
41. Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves;
42. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India]<sup>369</sup>
43. Services by operator of Common Effluent Treatment Plant by way of treatment of effluent
44. Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables<sup>370</sup>
45. Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo
46. Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members<sup>371</sup>
47. <sup>372</sup>Services by way of right to admission to,-
  - (i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;

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<sup>369</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

<sup>370</sup> Inserted by Not. No. 6/2015-ST w.e.f. 01.06.2015

<sup>371</sup> Inserted by Not. No. 6/2015-ST w.e.f. 01.06.2015

<sup>372</sup> Inserted by Not. No. 6/2015-ST w.e.f. 01.06.2015

(ii) recognised sporting event

(iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than Rs 500 per person

48. Services provided by Government or a local authority to a business entity with a turnover up to rupees ten lakh in the preceding financial year<sup>373</sup>

49. Services provided by Employees Provident Fund Organisation (EPFO) to persons governed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952<sup>374</sup>

50. Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999)<sup>375</sup>

51. Services provided by Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market<sup>376</sup>

52. Services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination<sup>377</sup>

53. Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India<sup>378</sup>

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;

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<sup>373</sup> Inserted vide Notification No. 07/2016-ST w.e.f. 01.04.2016

<sup>374</sup> Inserted vide Notification No. 9/2016-ST w.e.f. 01.04.2016

<sup>375</sup> Inserted vide Notification No. 9/2016-ST w.e.f. 01.04.2016

<sup>376</sup> Inserted vide Notification No. 9/2016-ST w.e.f. 01.04.2016

<sup>377</sup> Inserted vide Notification No. 9/2016-ST w.e.f. 01.04.2016

<sup>378</sup> Inserted vide Notification No. 9/2016-ST w.e.f. 01.06.2016

<sup>379</sup>(ba) "approved vocational education course" means,-

(i) 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 notified under the Apprentices Act, 1961 (52 of 1961.); or

(ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment

(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;

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(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;

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<sup>379</sup> Inserted vide Notification No. 9/2016-ST w.e.f. enactment of Finance Bill, 2016

<sup>380</sup> Omitted vide Not. No. 6/2014-ST WEF 11 July 2014



- (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 or prisoners;
    - (c) persons over the age of 65 years residing in a rural area;
  - (iv) preservation of environment including watershed, forests and wildlife;
  - ~~<sup>381</sup>(v) advancement of any other object of general public utility up to a value of, -~~
- ~~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;~~
- ~~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);

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<sup>381</sup> Omitted wef 1 April 2013 vide Not. No. 3/2013-ST dated 1 March 2013

- (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;

<sup>382</sup>(oa) "educational institution" means an institution providing services by way of:

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course~~"educational institution" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994)~~<sup>383</sup>

- (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 an authority or a board or any other body;
- (i) set up by an Act of Parliament or a State Legislature; **or**

<sup>382</sup> Substituted vide Notification No. 9/2016-ST w.e.f. enactment of Finance Bill, 2016

<sup>383</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

(ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution<sup>384</sup>

~~“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);

(xa) “life micro-insurance product” shall have the meaning assigned to it in clause (e) of regulation 2 of the Insurance Regulatory and Development Authority (Micro-insurance) Regulations, 2005<sup>385</sup>

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<sup>384</sup> Substituted vide Not. No. 2/2014-ST dated 30.01.2014

(xaa) “national park’ has the meaning assigned to it in the clause (21) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972)

(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) “radio taxi” means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);

(zaa) “recognised 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 affiliated 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]<sup>386</sup>

(zab) “recognised sporting event” means any sporting event,-

(i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;

(ii) covered under entry 11<sup>387</sup>

(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

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<sup>385</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

<sup>386</sup> Vide Not. No. 6/2014-ST WEF 11 July 2014

<sup>387</sup> Inserted by Not. No. 6/2015-ST

any area that may be notified as an urban area by the Central Government or a State Government;

(zdd) "senior advocate" has the meaning assigned to it in section 16 of the Advocates Act, 1961 (25 of 1961)<sup>388</sup>

(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) "tiger reserve" has the meaning assigned to it in clause (e) of section 38K of the Wild Life (Protection) Act, 1972 (53 of 1972)<sup>389</sup>

(zj) "trade union" has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).

(zk) "wildlife sanctuary" means sanctuary as defined in the clause (26) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);

(zl) "zoo" has the meaning assigned to it in the clause (39) of the section 2 of the Wild Life (Protection) Act, 1972 (53 of 1972)<sup>390</sup>

3. This notification shall come into force on the 1<sup>st</sup> day of July, 2012.

[F. No.334/1/2012 -TRU]

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<sup>388</sup> Inserted vide Notification No. 9/2016-ST w.e.f.01.04.2016

<sup>389</sup> Inserted by Not. No. 6/2015-ST

<sup>390</sup> Inserted by Not. No. 6/2015-ST

## 26/2012 - ABATEMENT NOTIFICATION

### Notification No. 26/2012- Service Tax

New Delhi, the 20<sup>th</sup> June, 2012

G.S.R..... (E). - 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 17<sup>th</sup> 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 17<sup>th</sup> 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**

<b>Sl. No.</b>	<b>Description of taxable service</b>	<b>Percent-Age</b>	<b>Conditions</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
1	Services in relation to financial leasing including hire purchase	10	Nil.
2	<u>Transport of goods by rail (other than service specified at Sl. No. 2A below)</u> <del>Transport of goods by rail</del> <sup>391</sup>	30	<u>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.</u> <del>Nil.</del>

<sup>391</sup> [Substituted vide notification No. 8/2016-ST w.e.f. 01.04.2016](#)

<a href="#">2A</a>	<a href="#">Transport of goods in containers by rail by any person other than Indian Railways<sup>392</sup></a>	<a href="#">40</a>	<a href="#">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.</a>
<a href="#">3</a>	Transport of passengers, with or without accompanied belongings by rail	30	<a href="#">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.</a> <del>Nil.</del>
<a href="#">4</a>	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.
<a href="#">5</a>	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.
<a href="#">6</a>	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant	60	Same as above.

<sup>392</sup> [Inserted vide Notification No. 8/2016-ST w.e.f. 01.04.2016](#)

	for residential or lodging purposes.		
<u>7</u>	<u>Services of goods transport agency in relation to transportation of goods other than used household goods</u> <del>Services of goods transport agency in relation to transportation of goods.</del> <sup>393</sup>	30 <sup>394</sup>	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider <sup>395</sup> under the provisions of the CENVAT Credit Rules, 2004.
<u>7A</u>	<u>Services of goods transport agency in relation to transportation of used household goods.</u>	<u>40</u>	<u>CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.</u>
<u>8</u>	<u>Services provided in relation to chit</u> <sup>396</sup>	<u>70</u>	<u>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</u>
<u>9</u>	Renting of motorcab <sup>397</sup>	40	(i) CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the

<sup>393</sup> [Substituted vide Notification No. 8/2016-ST w.e.f. 01.04.2016](#)

<sup>394</sup> Applicable w.e.f. 01.04.2015

<sup>395</sup> WEF 11 July 2014 Vide Not. No. 8/2014-ST dated 11 July 2014

<sup>396</sup> [Inserted vide Notification No. 8/2016-ST w.e.f.01.04.2016](#)

<sup>397</sup> W.e.f. 1 October 2014 vide Not. No. 8/2014-ST dated 11 July 2014



			<p>provisions of the CENVAT Credit Rules, 2004</p> <p>(ii) CENVAT credit on input service of renting of motorcab has been taken under the provisions of the CENVAT Credit Rules, 2004, in the following manner:</p> <p>(a) Full CENVAT credit of such input service received from a person who is paying service tax on forty percent of the value; or</p> <p>(b) Up to forty percent CENVAT credit of such input service received from a person who is paying service tax on full value;</p> <p>(iii) CENVAT credit on input services other than those specified in (ii) above, has not been taken under the provisions of the CENVAT Credit Rules, 2004<sup>398</sup></p>
<a href="#">9A</a>	Transport of passengers, with or without accompanied belongings, by <a href="#">a. a contract carriage other than motorcab<sup>399</sup></a> <a href="#">b. a radio taxi</a> <a href="#">a-c. a stage carriage</a>	40	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.”;
<a href="#">10</a>	Transport of goods in a vessel	40 <sup>400</sup>	<a href="#">CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been</a>

<sup>398</sup> WEF 11 October 2014 Vide Not. No. 8/2014-ST dated 11 July 2014

<sup>399</sup> Not. No. 8/2014-ST dated 11 July 2014 - In the serial number 9A, so inserted, for the entry in the column (2), the following entry shall be substituted with effect from such date as the Central Government may notify for omission of the words “radio taxis” in the section 66D(o)(vi) of the Finance Act 1994, namely:-

“Transport of passengers, with or without accompanied belongings, by-

a. a contract carriage other than motorcab.

b. a radio taxi.

<sup>400</sup> WEF 11 October 2014 Vide Not. No. 8/2014-ST dated 11 July 2014

			<u>taken under the provisions of the CENVAT Credit Rules, 2004</u> <sup>401</sup> <del>Same as above.</del>
<u>11</u>	<sup>402</sup> <u>Services by a tour operator in relation to,-</u> <u>(i) a tour, only for the purpose of arranging or booking accommodation for any person</u> <del>Services by a tour operator in relation to,-</del> <u>(i) a package tour</u>	<u>2510</u>	<u>(i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.</u> <u>(ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation.</u> <u>(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, includes only the service charges for arranging or booking accommodation for any person but does not include the cost of such accommodation.</u> <del>(i) CENVAT credit on inputs, capital goods and input services other than the input service of a tour operator</del> <sup>403</sup> <del>, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.</del> <del>(ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.</del>
	<u>(ii) tours other than (i) above</u> <del>(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation</del>	<u>1030</u>	<u>(i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been</u>

<sup>401</sup> Substituted vide Notification No. 8/2016-ST w.e.f. 01.04.2016

<sup>402</sup> Substituted vide Notification No. 8/2016-ST w.e.f. 01.04.2016

<sup>403</sup> WEF 11 October 2014 Vide Not. No. 8/2014-ST dated 11 July 2014

	<p><del>for any person in relation to a tour</del></p> <p>-</p>	<p><del>taken under the provisions of the CENVAT Credit Rules, 2004</del></p> <p><del>(ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour and the amount charged in the bill is the gross amount charged for such a tour.</del></p> <p><del>(i) CENVAT credit on inputs, capital goods and input services other than the input service of a tour operator<sup>404</sup>, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.</del></p> <p><del>(ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation.</del></p> <p><del>(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.</del></p>
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<sup>404</sup> WEF 11 October 2014 Vide Not. No. 8/2014-ST dated 11 July 2014

12	<p><u>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</u><sup>405406</sup></p> <p><del>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,—</del></p> <p><del>(a) for a residential unit satisfying both the following conditions, namely:—</del></p> <p><del>(i) the carpet area of the unit is less than 2000 square feet; and</del></p> <p><del>(ii) the amount charged for the unit is less than rupees one crore;</del></p> <p><del>(b) for other than the (a) above</del></p> <p><del>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</del></p>	<p>30</p> <p>25</p> <p>30</p> <p>25</p>	<p>(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.</p> <p>(ii)The value of land is included in the amount charged from the service receiver.</p>
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<sup>405</sup> Substituted by Notification No. 8/2016-ST w.e.f. 01.04.2016

<sup>406</sup> Not. No. 9/2013-ST dated 8 May 2013

	<p><del>the competent authority :-</del></p> <p><del><sup>407</sup>(i) for residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one crore;</del></p> <p><del>(ii) for other than the (i) above</del></p>	30	
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*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.

BA. For the purposes of exemption at Serial number 9, the amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods (including fuel) 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 contracts

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles<sup>408</sup>

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,-

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<sup>408</sup> Inserted vide Notification No. 8/2016-ST w.e.f. 01.04.2016

- a. <sup>409</sup>"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,
- b. ~~"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.

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<sup>409</sup> Deleted by Not. No. 13/2015-ST

## **27/2012 - EXEMPTION FOR FOREIGN DIPLOMATIC MISSION**

### **Notification No. 27/2012 - Service Tax**

New Delhi, the 20<sup>th</sup> June, 2012

G.S.R. (E).- In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services provided by any person, for the official use of a foreign diplomatic mission or consular post in India, or for personal use or for the use of the family members of diplomatic agents or career consular officers posted therein from whole of the service tax leviable under section 66B of the said Act, subject to the following conditions, namely:-

- (i) that the foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, are entitled to exemption from service tax, as stipulated in the certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity;
- (ii) that in case of diplomatic agents or career consular officers posted in the foreign diplomatic mission or consular post in India, the Protocol Division of the Ministry of External Affairs or the Protocol Department of the State concerned issues to each of such diplomatic agent or career consular officer an identification card bearing unique identification number and containing a photograph and name of such diplomatic agent or career consular officer and the name of the foreign diplomatic mission or consular post in India, where he is posted;
- (iii) that the head of the foreign diplomatic mission or consular post, or any person of such mission or post authorised by him, shall furnish to the provider of taxable service, a copy of such certificate duly authenticated by him or the authorised person, alongwith an undertaking in original, signed by him or the authorised person, bearing running serial number commencing from a financial year and stating that the services received are for official purpose of the said foreign diplomatic mission or consular post; or for personal use of the said



diplomatic agent or career consular officer or members of his/her family mentioning the unique identification number as appearing in the identification card issued to them and stating that the services received are for personal use of the said diplomatic agent or career consular officer or members of his/her family;

(iv) that the head of the foreign diplomatic mission or consular post or the authorized person shall maintain an account of the undertakings issued during a financial year and the account shall contain;-

(a) the serial number and date of issue of the undertakings;

(b) in case of personal use of diplomatic agents or career consular officers posted in the foreign diplomatic mission or consular post in India, the name, designation and unique identification number of the diplomatic agent or career consular officer in favour of whom the undertaking has been issued;

(c) the name and the registration number of the provider of taxable service; and

(d) the description of taxable service and invoice number.

(v) The invoice or bill, or as the case may be, the challan issued under the provisions contained in rule 4A of the Service Tax Rules, 1994, shall, in addition to the information required to be furnished under the said rule, contain the serial number and the date of the undertaking furnished by the said head of foreign diplomatic mission or consular post or in case of diplomatic agents or career consular officers posted in such foreign diplomatic mission or consular post in India, the unique identification number of the diplomatic agent or career consular officer, as the case may be; and

(vi) that the provider of taxable service shall retain the documents referred to in the conditions (i), (ii) and (iii) alongwith a duplicate copy of the invoice issued, for the purposes of verification.

2. In case the Protocol Division of the Ministry of External Affairs, after having issued a certificate to any foreign diplomatic mission or consular post in India or as the case may be, the identification card issued to a diplomatic agent or career consular officer, decides to withdraw any one or both of them subsequently, it shall communicate the withdrawal of such certificate or identification card, as the case may be, to the foreign diplomatic mission or consular post.
3. The exemption from the whole of the service tax granted to the foreign diplomatic mission or consular post in India for official purpose or for the personal use or use of their family members shall not be available from the date of withdrawal of such certificate or identification card, as the case may be.
4. This notification shall come into force on the 1<sup>st</sup> day of July, 2012.

[F.No. 334 /1/ 2012-TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

## **29/2012 - EXEMPTION ON PROPERTY TAX PAID**

### **Notification No. 29/2012- Service Tax**

New Delhi, the 20<sup>th</sup> June, 2012

G.S.R.....(E).- 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 Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 24/2007-Service Tax, dated the 22<sup>nd</sup> May, 2007, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 370 (E), dated the 22<sup>nd</sup> May, 2007, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of renting of an immovable property, from so much of the service tax leviable thereon under section 66B of the said Finance Act, 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:

Provided that any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons shall not be treated as property tax for the purposes of deduction from the gross amount charged:

Provided further that wherever the period for which property tax paid is different from the period for which service tax is paid or payable, property tax proportionate to the period for which service tax is paid or payable shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

*Example:*

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

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

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

2. This notification shall come into force on the 1<sup>st</sup> day of July, 2012.

[F.No. 334 /01/2012- TRU]

(Raj Kumar Digvijay)

Under Secretary to the Government of India

## 30/2012 - REVERSE CHARGE MECHANISM

### Notification No. 30/2012-Service Tax

New Delhi, the 20<sup>th</sup> June, 2012

GSR.....(E).—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 17<sup>th</sup> 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 17<sup>th</sup> 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 31<sup>st</sup> 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 31<sup>st</sup> 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;

(ia) provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company<sup>410</sup>

~~(ib) provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company<sup>411412</sup>~~

<sup>410</sup> From 11 July 2014 vide Not. No. 10/2014-ST

<sup>411</sup> ~~Inserted vide Not. No. 07/2015 - Dated 1-3-2015 w.e.f. 1st day of April, 2015~~

(ic) provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998)<sup>413</sup>~~provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent~~

(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) a firm of advocates or an individual advocate other than senior advocate, by way of legal services, or~~an individual advocate or a firm of advocates by way of support services, or~~<sup>414</sup>

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<sup>412</sup> Deleted vide Notification No. 18/2016-ST w.e.f. 01.04.2016

<sup>413</sup> Substituted vide Notification No. 18/2016-ST w.e.f. 01.04.2016

<sup>414</sup> Substituted vide Notification No. 18/2016-ST w.e.f. 01.04.2016

(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 or a body corporate to the said company or the body corporate<sup>415</sup>

(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<sup>416</sup> 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	Percentage of service tax payable by the person
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<sup>415</sup> From 11 July 2014 vide Not. No. 10/2014-ST

<sup>416</sup> *Ibid*

		providing service	receiving the service
(1)	(2)	(3)	(4)
1	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
1A	in respect of services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company <sup>417</sup>	Nil	100%
<del>1B</del>	<del>In respect of services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company<sup>418</sup></del>	<del>Nil</del>	<del>100%</del>
1C	<u>In respect of services provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998)<sup>419</sup></u> <del>In respect of service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent</del>	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%

<sup>417</sup> From 11 July 2014 vide Not. No. 10/2014-ST

<sup>418</sup> Deleted vide Notification No. 18/2016-ST w.e.f. 01.04.2016

<sup>419</sup> Substituted vide Notification No. 18/2016-ST w.e.f. 01.04.2016



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	<u>In respect of services provided or agreed to be provided by a firm of advocates or an individual advocate other than a senior advocate by way of legal services</u> <del>in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services</del> <sup>420</sup>	Nil	100%
5A	in respect of services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate <sup>421</sup>	Nil	100%
6	in respect of services provided or agreed to be provided by Government or local authority <del>by way of support services</del> <sup>422</sup> 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%
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	Nil	100 %

<sup>420</sup> [Substituted vide Notification No. 18/2016-ST w.e.f. 01.04.2016](#)

<sup>421</sup> From 11 July 2014 vide Not. No. 10/2014-ST

<sup>422</sup> [Deleted vide Notification No. 18/2016-ST w.e.f 01.04.2016](#)

	who is not engaged in the similar line of business  (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	50%	50 <sup>423</sup> %
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose or security services <sup>424</sup>	0%	100 %
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

<sup>423</sup> From 1 October 2014 vide Not. No. 10/2014-ST

<sup>424</sup> Not. No. 45/2012-ST dated 7 August 2012

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 1<sup>st</sup> day of July, 2012.

[F.No. 334/1/2012- TRU]

(Raj Kumar Digvijay)

Under Secretary to the Government of India

## 31/2012 - EXEMPTION TO GTA SERVICES FOR EXPORTER

### Notification No. 31/2012 - Service Tax

New Delhi, the 20th June, 2012

G.S.R.... (E). -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 the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2009-Service Tax, dated the 7<sup>th</sup> July, 2009, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R.490 (E), dated the 7<sup>th</sup> July, 2009, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods (hereinafter referred to as the said goods), of the description specified in column (2) of the Table below (hereinafter referred to as the specified service), from the whole of the service tax leviable thereon under section 66B of the said Act, subject to the conditions specified in column (3) of the said Table, namely:-

**Table**

Sr. No.	Description of the taxable service	Conditions
(1)	(2)	(3)
1.	Service provided to an exporter for transport of the said goods by goods transport agency in a goods carriage from any container freight station	The exporter shall have to produce the consignment note, by whatever name

<p>or inland container depot to the port or airport or land customs station<sup>425</sup>, as the case may be, from where the goods are exported; or</p> <p>Service provided to an exporter in relation to transport of the said goods by goods transport agency in a goods carriage directly from their place of removal, to an inland container depot, a container freight station, a port or airport, as the case may be, from where the goods are exported.</p>	<p>called, issued in his name.</p>
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Provided that-

(a) the exemption shall be available to an exporter who,-

- (i) informs the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory or the regional office or the head office, as the case may be, in Form EXP1 appended to this notification, before availing the said exemption;
- (ii) is registered with an export promotion council sponsored by the Ministry of Commerce or the Ministry of Textiles, as the case may be;
- (iii) is a holder of Import-Export Code Number;
- (iv) is registered under section 69 of the said Act;
- (v) is liable to pay service tax under sub-section (2) of section 68 of said Act, read with item (B) of sub-clause (i) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994, for the specified service;

(b) the invoice, bill or challan, or any other document by whatever name called issued by the service provider to the exporter, on which the exporter intends to

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<sup>425</sup> Inserted by Not. No.4/2015-ST

avail exemption, shall be issued in the name of the exporter, showing that the exporter is liable to pay the service tax in terms of item (v) of clause (a);

(c) the exporter availing the exemption shall file the return in Form EXP2, every six months of the financial year, within fifteen days of the completion of the said six months;

(d) the exporter shall submit with the half yearly return, after certification, the documents in original specified in clause (b) and the certified copies of the documents specified in column (4) of the said Table;

(e) the documents enclosed with the return shall contain a certification from the exporter or the authorised person, to the effect that taxable service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill number on the said document.

(f) where the exporter is a proprietorship concern or partnership firm, the documents enclosed with the return shall be certified by the exporter himself and where the exporter is a limited company, the documents enclosed with the return shall be certified by the person authorised by the Board of Directors;

2. This notification shall come into force on the 1<sup>st</sup> day of July, 2012.

### **Form EXP1**

[See item (i) of clause (a) of proviso ]

S.No-----

(to be filled in by the office of jurisdictional Assistant / Deputy Commissioner)

To,

The Deputy Commissioner /Assistant Commissioner of Central Excise

Sir,

I/We intend to avail of the exemption from service tax under Notification No. 31/2012-ST, dated 20<sup>th</sup> June, 2012 in respect of service for transport of the said goods by road, which has been used for export of goods and the relevant particulars are as follows.

1. Name of the exporter.....
2. Service Tax Registration No.....
3. Division ..... Commissionerate .....
- 4 Membership No. the Export Council.....
- 5 Name of the Export Council.....
6. Address of the registered / head office of exporter:.....
7. Tel. No. and e-mail ID of the exporter.....:
8. Import -Export Code No.....
9. Details of Bank Account (Name of Bank, branch address and account number).....

I/we undertake that I/we shall comply with the conditions laid down in the said notification and in case of any change in aforementioned particulars; I/We shall intimate the same.

Date:.....

Place:.....

Signature and full address of Exporter  
(Affix stamp)

Receipt (to be given by office of Assistant Commissioner/ Deputy Commissioner having jurisdiction) Received Form EXP1 dated --/--/-- submitted by \_\_\_\_\_( name of the exporter). The said intimation is accepted and given acknowledgment No. \_\_\_\_\_( S. No. Above)

For Assistant, / Deputy Commissioner  
(Stamp)

**Form EXP2**

[See clause (c) of proviso]

To,  
The Deputy Commissioner /Assistant Commissioner of Central Excise

Sir,

I/We have availed of exemption of service tax under Notification No. 31/2012-ST, dated 20<sup>th</sup> June, 2012 in respect of services, namely, the services provided for transport of said goods in a goods carriage by goods transport agency, and has used the same for export of goods during the period from ..... to..... .. and the relevant particulars are as follows:-

1. Name of the exporter.....
2. Address of the registered / head office of exporter.....
3. Tel. No. and e-mail ID of the exporter.....:
4. Service Tax Registration No.....
5. Division ..... Commissionerate .....
6. Membership No. Of the Export Council.....
7. Import Export Code No.....
8. Name of the Export Council.....
9. Details of Bank Account (Name of Bank, branch address and account number).....

**Table-A**



Sr. No.	Details of goods exported (on which exemption of service tax availed) during the six months ending on.....							
	Details of Shipping Bill/ Bill of export (Please enclose self attested copy of Shipping Bill or Bill of Export) and Details of goods exported (in case of exports of more than one commodity, please fill in the proforma, commodity-wise)							
	No.	Date	Date of Let export order	Export invoice no	Date	Description of goods exported	Quantity (please mention the unit)	FOB value (in rupees in lakh)

**Table- B**

Details of specified service used for export of goods, covered under the Shipping Bill or Bill of Export mentioned in Table A in respect of which the exemption has been availed during the six months ending on.....				Details of documents attached showing the use of such service for export, details of which are mentioned in Table A (self attested)	Total amount of service tax claimed as exemption (rupees in lakhs)
Name of service provider	Address of service provider	Invoice No.	Date		

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**9. Declaration:-**

I / We hereby declare that-

(i) I have complied with all the conditions mentioned in Notification No. 31/2012-ST, dated 20<sup>th</sup> June, 2012;

(ii) the information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the exporter;

(iii) no CENVAT credit of service tax paid on the specified service used for export of said goods taken under the CENVAT Credit Rules, 2004;

(iv) I / we, am/ are enclosing all the required documents. Further, I understand that failure to file the return within stipulated time or non-enclosure of the required document, duly certified, would debar me/us for the refund claimed aforesaid.

Date:.....

Place:.....

**Signature and full address of Exporter  
(Affix stamp)**

**Enclosures: as above**

[F.No. 334 /1/ 2012-TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

## **32/2012 - EXEMPTION OF SERVICES PROVIDED BY TBI AND**

### **STEP Notification No. 32/2012- Service Tax**

New Delhi, the 20<sup>th</sup> June, 2012

G.S.R..... (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification number 9/2007-ST, dated the 1<sup>st</sup> March,2007, published in the Gazette of India, Extraordinary, *vide* number G.S.R. 163 (E), dated the 1<sup>st</sup> March,2007, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services, provided or to be 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 [or bio-incubators recognized by the Biotechnology Industry Research Assistance](#)

[Council, under Department of Biotechnology, Government of India](#), from the whole of the service tax leviable thereon under section 66B of the said Finance Act, subject to following conditions, namely:-

1. that the STEP or the TBI [or the bioincubator](#)<sup>426</sup>, who intends to avail the exemption, shall furnish the requisite information in Format I below containing the details of the incubator along with the information in Format II below received from each incubatee to the concerned Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, before availing the exemption; and

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<sup>426</sup> [Inserted vide Notification No. 12/2016-ST w.e.f. 01.04.2016](#)

2. that the STEP or the TBI or the bioincubator<sup>427</sup> shall furnish the information in the said Format I and Format II in the same manner before the 30th day of June of each financial year.

**Format - I - Information to be furnished by TBI or the STEP or the Bio-Incubator**<sup>428</sup>

Filed in the financial year \_\_\_\_\_

- (a) Name of the Technology Business Incubator / Science and Technology Entrepreneurship Park /bio-incubator<sup>429</sup> \_\_\_\_\_
- (b) Address \_\_\_\_\_
- (c) Whether availing benefit of exemption for first time \_\_\_\_\_
- (d) If the answer to 3 is not in affirmative, the date from which benefit is being availed \_\_\_\_\_
- (e) Details of taxable services provided during the previous financial year :-

Sl. No.	Description of Taxable Service	Value of taxable Service Provided	
		To incubatee	To others

(f) Details of Taxable services provided by incubatees as per enclosure

\_\_\_\_\_

Place \_\_\_\_\_

Date \_\_\_\_\_

Signature of the authorised person

**Acknowledgement**

I hereby acknowledge the receipt of Format I for the period \_\_\_\_\_

<sup>427</sup> [Inserted vide Notification No. 12/2016-ST w.e.f. 01.04.2016](#)

<sup>428</sup> [Inserted vide Notification No. 12/2016-ST w.e.f. 01.04.2016](#)

<sup>429</sup> [Inserted vide Notification No. 12/2016-ST w.e.f. 01.04.2016](#)

Place \_\_\_\_\_

Date \_\_\_\_\_

Signature of the Officer of  
Central Excise and Service Tax  
(with Name and Official seal)

**Format II – Information to be obtained by TBI / STEP /the Bio-  
Incubator<sup>430</sup> from each incubatee and to be filed along with Format I**

1. Name of the Incubatee \_\_\_\_\_
2. Address \_\_\_\_\_
3. Details of the project \_\_\_\_\_
4. Date of signing agreement with the TBI / STEP (incubator) /the Bio-Incubator<sup>431</sup>  
\_\_\_\_\_
5. Total business turnover during the previous financial year \_\_\_\_\_
6. Details of taxable services provided during the previous financial year \_\_\_\_\_

Sl. No.	Description of Taxable Service	Value of Service Provided

Place \_\_\_\_\_

Date \_\_\_\_\_

Signature of the authorized person

2. This notification shall come into force on the 1<sup>st</sup> day of July, 2012.

[F.No. 334 /1/ 2012-TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

<sup>430</sup> [Inserted vide Notification No. 12/2016-ST w.e.f. 01.04.2016](#)

<sup>431</sup> [Inserted vide Notification No. 12/2016-ST w.e.f. 01.04.2016](#)



## **33/2012 - EXEMPTION TO SMALL SERVICE PROVIDERS**

### **Notification No. 33/2012 - Service Tax**

New Delhi, the 20th June, 2012

G.S.R. (E).- 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 Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1<sup>st</sup> March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* G.S.R. number 140(E), dated the 1<sup>st</sup> March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

2. The exemption contained in this notification shall apply subject to the following

conditions, namely:-

- (i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;
- (ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;
- (iii) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received, during the period in which the service provider avails exemption from payment of service tax under this notification;
- (iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;
- (v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;
- (vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;
- (vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the



aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

3. For the purposes of determining aggregate value not exceeding ten lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 of the said Finance Act for which the person liable for paying service tax is as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account.

Explanation.- For the purposes of this notification,-

(A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person;

(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

4. This notification shall come into force on the 1st day of July, 2012.

[F.No. 334 /01/2012- TRU] (Raj Kumar Digvijay)

Under Secretary to the Government of India

## 34/2012 - RESCINDING OF EARLIER 81 NOTIFICATIONS

### Notification No. 34/2012- Service Tax

New Delhi, the 20<sup>th</sup> June, 2012

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby rescinds the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), as specified in column (2) of the Table below, except as respects things done or omitted to be done before such recession namely:-Table

SL. NO. (1)	NOTIFICATION NO. AND DATE (2)
1.	06/2012- Service Tax, dated 17-03-2012.[G.S.R. 204(E), dated 17-03-2012]
2.	45/2011 - Service Tax, dated 12-09-2011.[G.S.R. 672(E), dated 12-09-2011]
3.	42/2011 - Service Tax, dated 25-07-2011.[G.S.R. 566(E), dated 25-07-2011]
4.	33/2011 - Service Tax, dated 25-04-2011.[G.S.R 341(E) dated 25-04-2011]
5.	31/2011 - Service Tax, dated 25-04-2011.[G.S.R 339(E) dated 25-04-2011]
6.	30/2011 - Service Tax, dated 25-04-2011.[G.S.R 338(E) dated 25-04-2011]
7.	11/2011 - Service Tax, dated 01-03-2011 .[G.S.R 168(E) dated 01-03-2011]
8.	10/2011 - Service Tax, dated 01-03-2011 .[G.S.R.167(E) dated 01-03-2011]
9.	09/2011 - Service Tax, dated 01-03-2011. [G.S.R.166(E) dated 01-03-2011]
10.	08/2011 - Service Tax, dated 01-03-2011. [G.S.R.165(E) dated 01-03-2011]
11.	07/2011 - Service Tax, dated 01-03-2011. [G.S.R.164(E) dated 01-03-2011]
12.	06/2011 - Service Tax, dated 01-03-2011. [G.S.R. 163(E) dated 01-03-2011]
13.	05/2011 - Service Tax, dated 01-03-2011. [G.S.R. 162(E) dated 01-03-

	2011]
14.	58/2010 - Service Tax, dated 21-12-2010. [G.S.R.996(E) dated 21-12-2010]
15.	53/2010 - Service Tax, dated 21-12-2010. [G.S.R.991(E) dated 21-12-2010]
16.	50/2010 - Service Tax, dated 08-10-2010. [G.S.R.823(E) dated 08-10-2010]
17.	47/2010 - Service Tax, dated 03-09-2010. [G.S.R.727(E) dated 03-09-2010]
18.	42/2010 - Service Tax, dated 28-06-2010. [G.S.R.563(E) dated 28-06-2010]
19.	41/2010 - Service Tax, dated 28-06-2010. [G.S.R.562(E) dated 28-06-2010]
20.	38/2010 - Service Tax, dated 28-06-2010. [G.S.R.559(E) dated 28-06-2010]
21.	32/2010 - Service Tax, dated 22-06-2010. [G.S.R.538(E) dated 22-06-2010]
22.	31/2010 - Service Tax, dated 22-06-2010. [G.S.R.537(E) dated 22-06-2010]
23.	30/2010 - Service Tax, dated 22-06-2010. [G.S.R.536(E) dated 22-06-2010]
24.	28/2010 - Service Tax, dated 22-06-2010. [G.S.R.534(E) dated 22-06-2010]
25.	27/2010 - Service Tax, dated 22-06-2010. [G.S.R.533(E) dated 22-06-2010]
26.	25/2010 - Service Tax, dated 22-06-2010. [G.S.R.531(E) dated 22-06-2010]
27.	23/2010 - Service Tax, dated 29-04-2010. [G.S.R.345(E) dated 29-04-2010]
28.	13/2010 - Service Tax, dated 27-02-2010. [G.S.R.157(E) dated 27-02-2010]
29.	12/2010 - Service Tax, dated 27-02-2010. [G.S.R.156(E) dated 27-02-2010]
30.	11/2010 - Service Tax, dated 27-02-2010. [G.S.R.155(E) dated 27-02-2010]
31.	10/2010 - Service Tax, dated 27-02-2010. [G.S.R.154(E) dated 27-02-2010]
32.	08/2010 - Service Tax, dated 27-02-2010. [G.S.R.152(E) dated 27-02-2010]
33.	42/2009 - Service Tax, dated 12-11-2009. [G.S.R.821(E) dated 12-11-2009]
34.	41/2009 - Service Tax, dated 23-10-2009. [G.S.R.776(E) dated 23-10-2009]
35.	39/2009 - Service Tax, dated 23-09-2009. [G.S.R.696(E) dated 23-09-2009]
36.	33/2009- Service Tax, dated 1-9-2009. [G.S.R.627(E) dated 1-9-2009]
37.	32/2009 - Service Tax, dated 1-09-2009. [G.S.R.626(E) dated 1-9-2009]
38.	31/2009 - Service Tax, dated 1-09-2009. [G.S.R.625(E) dated 1-9-2009]
39.	30/2009 - Service Tax, dated 31-08-2009. [G.S.R.619(E) dated 31-08-2009]
40.	24/2009- Service Tax, dated 27-7-2009. [G.S.R.551(E) dated 27-7-2009]
41.	20/2009 - Service Tax, dated 07-07-2009. [G.S.R.492(E) dated 07-07-2009]
42.	19/2009 - Service Tax, dated 07-07-2009. [G.S.R.491(E) dated 07-07-2009]
43.	01/2009 - Service Tax, dated 05-01-2009. [G.S.R.10(E) dated 05-01-2009]

44.	14/2008 - Service Tax, dated 01-03-2008. [G.S.R.158(E) dated 01-03-2008]
45.	13/2008- Service Tax, dated 01-03-2008. [G.S.R.157(E) dated 01-03-2008]
46.	34/2007 - Service Tax, dated 23-05-2007. [G.S.R.387(E) dated 23-05-2007]
47.	33/2007_- Service Tax, dated 23-05-2007. [G.S.R.386(E) dated 23-05-2007]
48.	25/2007- Service Tax, dated 22-05-2007. [G.S.R.371(E) dated 22-05-2007]
49.	12/2007- Service Tax dated 01-03-2007. [G.S.R.166(E) dated 01-03-2007]
50.	11/2007- Service Tax dated 01-03-2007. [G.S.R.165(E) dated 01-03-2007]
51.	10/2007- Service Tax dated 01-03-2007. [G.S.R.164(E) dated 01-03-2007]
52.	08/2007- Service Tax dated 01-03-2007. [G.S.R.162(E) dated 01-03-2007]
53.	22/2006- Service Tax, dated 31-05-2006. [G.S.R.328(E) dated 31-05-2006]
54.	06/2006- Service Tax, dated 01-03-2006. [G.S.R.120(E) dated 01-03-2006]
55.	04/2006- Service Tax, dated 01-03-2006. [G.S.R.118(E) dated 01-03-2006]
56.	01/2006- Service Tax, dated 01-03-2006. [G.S.R.115(E) dated 01-03-2006]
57.	29/2005- Service Tax, dated 15-07-2005. [G.S.R.477(E) dated 15-07-2005]
58.	21/2005- Service Tax, dated 07-06-2005. [G.S.R.363(E) dated 07-06-2005]
59.	17/2005- Service Tax, dated 07-06-2005. [G.S.R.359(E) dated 07-06-2005]
60.	08/2005- Service Tax, dated 01-03-2005. [G.S.R.142(E) dated 01-03-2005]
61.	34/2004- Service Tax, dated 03-12-2004. [G.S.R.789(E) dated 03-12-2004]
62.	33/2004- Service Tax, dated 3-12-2004. [G.S.R.788(E) dated 3-12-2004]
63.	29/2004- Service Tax, dated 22-09-2004. [G.S.R.632(E) dated 22-09-2004]
64.	24/2004- Service Tax, dated 10-09-2004. [G.S.R.598(E) dated 10-09-2004]
65.	17/2004- Service Tax, dated 10-09-2004. [G.S.R.591(E) dated 10-09-2004]
66.	14/2004- Service Tax, dated 10-09-2004. [G.S.R.588(E) dated 10-09-2004]
67.	13/2004- Service Tax, dated 10-09-2004. [G.S.R.587(E) dated 10-09-2004]
68.	16/2003- Service Tax, dated 11-07-2003. [G.S.R.542(E) dated 11-07-2003]
69.	14/2003- Service Tax, dated 20-06-2003. [G.S.R.505(E) dated 20-06-2003]
70.	13/2003- Service Tax, dated 20-06-2003. [G.S.R.504(E) dated 20-06-2003]
71.	12/2003- Service Tax, dated 20-06-2003. [G.S.R.503(E) dated 20-06-2003]
72.	10/2003- Service Tax, dated 20-06-2003. [G.S.R.502(E) dated 20-06-2003]
73.	18/2002- Service Tax, dated 16-12-2002. [G.S.R.823(E) dated 16-12-2002]
74.	16/2002- Service Tax, dated 02-08-2002. [G.S.R.546(E) dated 02-08-2002]

75.	10/2002- Service Tax, dated 01-08-2002. [G.S.R.538(E)dated 01-08-2002]
76.	4/2000- Service Tax, dated 31-07-2000. [G.S.R.643(E) dated 31-07-2000]
77.	3/2000- Service Tax, dated 06-07-2000. [G.S.R.588(E) dated 06-07-2000]
78.	2/2000- Service Tax, dated 01-03-2000. [G.S.R.210(E) dated 01-03-2000]
79.	22/1997- Service Tax, dated 26-06-1997. [G.S.R. 348(E) dated 26-06-1997]
80.	12/1997- Service Tax, dated 14-02-1997. [G.S.R.74(E) dated 14-02-1997]
81.	03/1994- Service Tax, dated 30-06-1994. [G.S.R.555(E) dated 30-06-1994]

2. This notification shall come into force on the 1<sup>st</sup> day of July, 2012.

[F.No. 334 /1/ 2012-TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

## **35/2012 - Earlier Works Contract Composition Scheme rescinded**

### **Notification No. 35/2012 - Service Tax**

New Delhi, the 20<sup>th</sup> June, 2012

G.S.R. (E).- In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby rescinds the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 32/ 2007 – Service Tax, dated the 22<sup>nd</sup> May, 2007, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(i), vide number G.S.R. 378(E), dated the 22<sup>nd</sup> May 2007, except as respects things done or omitted to be done before such rescission.

2. This notification shall come into force on the 1<sup>st</sup> day of July, 2012.

[F. No.334/1/2012 -TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

## 28/2011 - NOTIFIED CONTINUOUS SUPPLY OF SERVICES

### Notification No.28/2011 – Service Tax<sup>432</sup>

G.S.R. (E).- In exercise of the powers conferred under clause (a) and clause (hhh) of sub-section (2) of section 94 the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), read with clause (c) of rule (2) of the Point of Taxation Rules, 2011(hereinafter referred to as the said rules), the Central Government hereby notifies that the provision of taxable services referred of **telecommunication** service and service portion in execution of a **works contract**, shall be treated as continuous supply of service, for the purpose of the said rules.

(SAMAR NANDA)

Under Secretary to the Government of India

[F. No. 334/3/ 2011 – TRU]

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<sup>432</sup> As amended vide Not. No. 38/2012-ST dated 20 June 2012

## **39/2012 - REBATE ON INPUTS AND INPUT SERVICES**

### **Notification No.39/2012 - Service Tax**

New Delhi, the 20<sup>th</sup> June, 2012

GSR .... (E). In exercise of the powers conferred by rule 6A of the Service Tax Rules, 1994 (hereinafter referred to as the said rules), the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all input services (herein after referred to as 'input services'), used in providing service exported in terms of rule 6A of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

#### **2. Conditions and limitations:-**

- (a) that the service has been exported in terms of rule 6A of the said rules;
- (b) that the duty on the inputs, rebate of which has been claimed, has been paid to the supplier;
- (c) that the service tax and cess, rebate of which has been claimed, have been paid on the input services to the provider of service;

Provided if the person is himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.

- (d) the total amount of rebate of duty, service tax and cess admissible is not less than one thousand rupees;
- (e) no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed; and
- (f) that in case,-
  - (i) the duty or, as the case may be, service tax and cess, rebate of which has been claimed, has not been paid; or



(ii) the service, rebate for which has been claimed, has not been exported; or

(iii) CENVAT credit has been availed on inputs and input services on which rebate has been claimed,

the rebate paid, if any, shall be recoverable with interest in accordance with the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994)

### 3. **Procedure.**

3.1 Filing of Declaration.- The provider of service to be exported shall, prior to date of export of service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, specifying the service intended to be exported with,-

(a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;

(b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported.

3.2 Verification of declaration.- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration.

3.3 Procurement of input materials and receipt of input services.- The provider

of service to be exported shall,-

- (i) obtain the inputs required for use in providing service to be exported, directly from a registered factory or from a dealer registered for the purposes of the CENVAT Credit Rules, 2004 accompanied by invoices issued under the Central Excise Rules, 2002;
- (ii) receive the input services required for use in providing service to be exported and an invoice, a bill or, as the case may be, a challan issued under the provisions of Service Tax Rules, 1994.

#### 3.4 Presentation of claim for rebate.-

- (a) (i) claim of rebate of the duty paid on the inputs or the service tax and cess paid on input services shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, after the service has been exported;
- (ii) such application shall be accompanied by, –
  - (a) invoices for inputs issued under the Central Excise Rules, 2002 and invoice, a bill, or as the case may be, a challan for input services issued under the Service Tax Rules, 1994, in respect of which rebate is claimed;
  - (b) documentary evidence of receipt of payment against service exported, payment of duty on inputs and service tax and cess on input services used for providing service exported, rebate of which is claimed;
  - (c) a declaration that such service, has been exported in terms of rule 6A of the said rules, along with documents evidencing such export.
- (b) The jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, having regard to the declaration, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

*Explanation 1.*- For the purposes of this notification "service tax and cess" means,-

- (a) service tax leviable under section 66 or section 66B of the Finance Act, 1994 (32 of 1994);
- (b) education cess on taxable service levied under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and
- (c) Secondary and Higher Education Cess on taxable services levied under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007).

*Explanation 2.*- For the purposes of this notification "duty" means, duties of excise leviable under the following enactments, namely:-

- (a) the Central Excise Act, 1944 (1 of 1944);
- (b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
- (d) National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003), section 3 of the Finance Act, 2004 (13 of 2004) and further amended by section 123 of the Finance Act, 2005 (18 of 2005);
- (e) special duty of excise collected under a Finance Act;
- (f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);
- (g) Education Cess on excisable goods as levied under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004); and
- (h) the additional duty of excise leviable under section 85 of the Finance Act,

2005 (18 of 2005).

- (i) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007).

## **Annexure**

### **FORM ASTR-2**

#### **(Application for filing a claim of rebate of duty paid on inputs, service tax and cess paid on input services)**

(PART A: To be filled by the applicant)

Date.....

Place.....

To,

Assistant Commissioner of Central Excise/Deputy Commissioner of Central Excise  
..... (full postal address).

Madam/Sir,

I/We.....,(name of the person claiming rebate) holding service tax registration No. ...., located in..... (address of the registered premises) hereby declare that I/We have exported .....service (name of the service) under rule 6A of the Service Tax Rules, 1994 to .....(name of the country to which service has been exported), and service tax amounting to ..... (amount in rupees of service tax) and education cess amounting to ..... (amount in rupees of cess) has been paid on input services and duty amounting to ..... (amount in rupees of duty) has been paid on inputs.

2. I/We also declare that the payment against such service exported has already been received in India in full..... (details of receipt of payment).

3. I/We request that the rebate of the duty, service tax and cess on inputs and input services used in providing service exported by me/us in terms of rule 6A of the Service Tax Rules, 1994 may be granted at the earliest. The following documents are enclosed in support of this claim for rebate.

- 1.
- 2.
- 3.

Declaration:

- (a) We hereby certify that we have not availed CENVAT credit on inputs and input services on which rebate has been claimed.
- (b) We have been granted permission by Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, vide C. No. \_\_\_\_\_, dated \_\_\_\_\_ for working under notification No. \_\_\_\_\_, dated \_\_\_\_\_.

(Signature and name of the service provider or his authorised agent with date)

(PART B: To be filled by the sanctioning authority)

Date of receipt of the rebate claim: \_\_\_\_\_

Date of sanction of the rebate claim: \_\_\_\_\_

Amount of rebate claimed: Rs. \_\_\_\_\_

Amount of rebate sanctioned: Rs. \_\_\_\_\_

If the claim is not processed within 15 days of the receipt of the claim, indicated briefly reasons for delay.

Place:

Date:

Signature of the Assistant Commissioner/  
Deputy Commissioner of Central Excise.

4. This notification shall come into force on the 1<sup>st</sup> day of July, 2012.

F. No. 334/1/2012-TRU

(Raj Kumar Digvijay)  
Under Secretary to the Government of India

## 40/2012 - EXEMPTION ON SERVICES PROVIDED TO SEZ AUTHORISED OPERATIONS

### Notification No. 40 / 2012-Service Tax<sup>433</sup>

New Delhi, the 20<sup>th</sup> June, 2012

G.S.R. (E). – 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) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007(22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17/2011-Service Tax, dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.174(E), dated the 1st March, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ and used for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

2. The exemption contained in this notification shall be subject to the following conditions, namely:-

(a) the exemption shall be provided by way of refund of service tax paid on the specified services received by a unit located in a SEZ or the developer of SEZ and used for the authorised operations:

Provided that where the specified services received in SEZ and used for the authorised operations are wholly consumed within the SEZ, the person liable to pay

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<sup>433</sup> Superseded by Not. No. 12/2013-ST dated 1 July 2013

service tax has the option not to pay the service tax ab initio instead of the SEZ unit or the developer claiming exemption by way of refund in terms of this notification.

Explanation.- For the purposes of this notification, the expression “wholly consumed” refers to such specified services received by the unit of a SEZ or the developer and used for the authorised operations, where the place of provision determinable in accordance with the Place of Provision of Services Rules, 2012(hereinafter referred as the POP Rules) is as under:-

1. in respect of services specified in rule 4 of the POP Rules, the place where the services are actually performed is within the SEZ ; or
2. in respect of services specified in rule 5 of the POP Rules, the place where the property is located or intended to be located is within the SEZ; or
3. in respect of services other than those falling under clauses (i) and (ii), the recipient does not own or carry on any business other than the operations in SEZ;

(b) where the specified services received by the unit of a SEZ or developer are not wholly consumed within SEZ, maximum refund shall be restricted to the extent of the ratio of export turnover of goods and services multiplied by the service tax paid on services other than wholly consumed services to the total turnover for the given period to which the claim relates, i.e.,

Refund amount =  $(\text{Export turnover of goods Services of SEZ Unit/Developer}) + X$   
Service tax paid on services other than wholly consumed Services (both for SEZ and DTA) / Total turnover for the period

Explanation.- For the purposes of condition (b),-

1. “refund amount” means the maximum refund that is admissible for the period;
2. “export turnover of goods” means the value of final products and intermediate products cleared during the relevant period and exported;



3. "export turnover of services" means the value of the export service calculated in the following manner, namely:-

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;

4. "total turnover" means sum total of the value of-
  1. (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
  2. export turnover of services determined in terms of clause (C) and the value of all other services, during the relevant period; and
  3. for the purpose of claiming exemption, the Unit of a SEZ or developer shall obtain a list of services that are liable to service tax as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;
  4. for the purpose of claiming ab initio exemption, the unit of a SEZ or developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, in addition to the list specified under condition (c); the unit of a SEZ or developer who does not own or carry on any business other than the operations in SEZ, shall declare to that effect in Form A-1;
  5. the unit of a SEZ or developer claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed, have been used for the authorised operations;
  6. the unit of a SEZ or developer claiming the exemption by way of refund, should have paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the said Act;

7. no CENVAT credit of service tax paid on the specified services used for the authorised operations in a SEZ has been taken under the CENVAT Credit Rules, 2004;
8. no refund shall be available on services wholly consumed for operations in the Domestic Tariff Area (DTA) worked out in the same manner as clauses (i) and (ii) of the explanation to condition (a);
9. exemption or refund of service tax paid on the specified services other than wholly consumed services used for the authorised operations in a SEZ shall not be claimed except under this notification;
10. the unit of a SEZ or developer, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

3. The following procedure should be adopted for claiming the benefit of the exemption contained in this notification, namely:-

1. the unit of a SEZ or developer, who has paid the service tax leviable under section 66B of the said Act shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations;
2. the unit of a SEZ or developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the SEZ unit or developer, as the case may be, in Form A-2;
3. the unit of a SEZ or developer who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be,

- having jurisdiction over the SEZ or registered office or the head office of the SEZ unit or developer, as the case may be, in Form A-3;
4. the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the unit of a SEZ or developer, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3;
  5. claim for refund shall be filed, within one year from the end of the month in which actual payment of service tax was made by such developer or unit, to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;
  6. the refund claim shall be accompanied by the following documents, namely:-
    1. a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, a copy of the declaration made in Form A-1;
    2. invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of the said Act or rules made thereunder, in the name of the unit of a SEZ or developer, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original;
    3. a declaration by the unit of a SEZ or developer, claiming such exemption, to the effect that—
      1. the specified services on which refund of service tax claimed, has been used for the authorized operations in the SEZ ;
      2. proper account of the specified services received and used for the authorised operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;
      3. accounts or documents furnished by the unit of a SEZ or developer as proof of payment of service tax claimed as refund, based on the invoice, or bill , or as the case may be challan issued by the registered service provider

indicating the service tax paid on such specified services, are true and correct in all respects;

7. the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after verifying that,-

1. the refund claim is complete in all respects;
2. the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider, shall refund the service tax paid on the specified services;

8. a service provider shall provide the specified services falling under wholly consumed category, under ab initio exemption granted by this notification, to a unit of a SEZ or developer, for authorised operations, subject to the submission of list specified in condition (c) under paragraph 2 and a declaration in Form A-1;

9. where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the said Act and the rules made there under, as if it is recovery of service tax erroneously refunded;

4. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 (28 of 2005) or the rules made thereunder, shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.

Explanation.- For the purposes of this notification, "statutory auditor" refers to a Chartered Accountant who audits the annual accounts of the unit of a SEZ or developer for the purposes of the Companies Act, 1956 (1 of 1956) or the Income tax Act, 1961(43 of 1961).

5. This notification shall come into force on the 1st day of July, 2012.

**(Rajkumar Digvijay)**

**Under Secretary to the Government of India**

**[F. No. 334/1/2012-TRU]**

**FORM A-1**

**DECLARATION BY THE UNIT OF A SEZ OR DEVELOPER FOR AVAILING AB  
INITIO EXEMPTION UNDER NOTIFICATION No. \_\_\_\_\_ DATED \_\_\_\_\_**

**[Refer condition (d) under paragraph 2]**

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with Telephone and Email:
3. Permanent Account Number(PAN) of the SEZ Unit/Developer:
4. Import and Export Code Number:
5. Jurisdictional Central Excise/Service Tax Division:
6. Service Tax Registration Number/Service Tax Code:
7. Declaration: I/We hereby declare that-
  1. The information given in this application form is true, correct and complete in every respect and I am authorised to sign on behalf of the SEZ Unit/Developer;
  2. I/We maintain proper account of specified services, as approved by the Approval Committee of SEZ, received and used for authorised operations in SEZ; I/we shall make available such accounts and related records, at all reasonable times, to the jurisdictional Central Excise Officers for inspection or scrutiny.
  3. I/We shall use/have used specified services for authorised operations in the SEZ.
  4. I/We declare that we do not own or carry on any business other than the operations in SEZ [where this item is not applicable, declaration may be submitted after striking out the inapplicable portion];
  5. I/We are aware that the Declaration is valid only for the purpose specified in Notification \_\_\_\_\_ dated \_\_\_\_\_ and is subject to fulfillment of conditions.

6. I/We intend to claim ab initio exemption from the following service provider(s) in the Domestic Tariff Area(DTA):

Sl.No.	specified service(s) to be received from the DTA service provider(s)	DTA Service provider(s) who provide(s) the specified service(s), for SEZ authorised operations	
		Name and address	Service Tax Registration No.
(1)	(2)	(3)	(4)

**Signature and Name of Authorised Person with stamp**

Date:

Place:

I have verified the above Declaration; it is correct

Signature, date and stamp of the Specified Officer of the SEZ (Specified Officer shall retain a copy of the verified Declaration, for the purpose of record)

**FORM A-2**

**APPLICATION FOR CLAIMING REFUND OF SERVICE TAX PAID ON SPECIFIED SERVICES USED FOR AUTHORISED OPERATIONS IN SEZ**

To

The Assistant/Deputy Commissioner of Central Excise/Service Tax  
 \_\_\_\_\_ Division, \_\_\_\_\_ Commissionerate

Sir,

I /We claim refund of Rs..... (Rupees in words)

(a) in respect of service tax paid on 'wholly consumed' specified services used for the authorized operations in SEZ, as approved by the Approval Committee of the \_\_\_\_\_ SEZ [ Rupees \_\_\_\_\_ ]

(b) in respect of service tax paid on specified services, other than those that are wholly consumed, used for the authorized operations of SEZ Unit/Developer, as approved by the Approval Committee of the \_\_\_\_\_ SEZ [ Rupees \_\_\_\_\_ ].

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with Telephone and Email:
3. Address of the Registered/Head Office with Telephone and Email:
4. Permanent Account Number(PAN) of the SEZ Unit/Developer:
5. Import and Export Code Number:
6. Jurisdictional Central Excise/Service Tax Division:
7. Service Tax Registration Number/Service Tax Code:
8. Information regarding Bank Account ( Bank, Address of Branch, Account Number) in which refund amount should be credited/to be deposited:
9. Details regarding Service Tax refund claimed:
  - 9.1 Refund arising out of 'wholly consumed' specified services:

**Table-A**

Sl. No.	Details regarding specified services used in the authorized operations of SEZ, as approved by the Approval Committee						Amount of service tax claimed as Refund (including education	Document enclosed as proof of payment of service tax by the SEZ Unit/Developer, (	
	Description of taxable service (as per the	Name and address of Service	Service Tax Registration Number of Service Provide	Invoice/ Bill/ Challan (original enclosed)					Amount of Service tax paid (including educa
				Number	Date	Value of taxable service (Rupees)			

	invoice ) used in the authori zed operati ons of SEZ	Provi der	r				tion cess) (Rupe es)	ion cess) (Rupe es)	sl.no and date of invoice/ bill / challan)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.									
2.									
TOTAL									--

9.2. Refunds arising out of specified services, other than those are 'wholly consumed':

I/We request refund of service tax paid on specified services, other than those that are 'wholly consumed',-

1. used in the manufacture of final products exported from SEZ
2. used in providing output services exported from SEZ

I/We furnish following true and correct particulars, in Tables 'B' and 'C', for the purpose of above refund:

**Table – B**

No.	Specified services other than those that are 'wholly consumed', used for authorised operations by SEZ	Docume nt
-----	-------------------------------------------------------------------------------------------------------	--------------



	Unit/Developer, during the period for which refund is claimed							enclosed as proof of payment of service tax (sl.no and date of invoice/ bill / challan)
	Description of taxable service(as per the invoice) used in the authorized operations of SEZ	Name and address of Service Provider	Service Tax Registration Number of Service Provider	Invoice/ Bill/ Challa n (original enclosed)			Amount of Service tax paid (including education cess)(Rupees)	
				Number	Date	Value of taxable service (Rupees)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.								
2.								
TOTAL								--

**Table - C**

Details		Details for the period to which the invoices pertain and refund is claimed		
		Export turnover of SEZ Unit(s)/Developer	Service tax paid on input services other than wholly consumed services	Total turnover
		(1)	(2)	(3)
-Goods	(a)		---	
Output services	(b)		----	
Others(Bought	(c)	----	----	

out goods sold) )			
Total (a)+(b)+(c)=(d)			

Instructions for compilation of the above statistical table:

1. To calculate the export turnover of SEZ, in the case of export of goods, FOB value provided in Shipping Bills or Bills of Export, should be taken into account, which have been duly certified by the officer of customs to the effect that the goods have been exported;
2. To calculate the export turnover of SEZ, in the case of export of services, value of output services exported shall be on the basis of certificates issued by the bank certifying the realization of export proceeds.
3. Amount of service tax claimed as refund, under Table B read with Table C: Rupees\_\_\_\_\_
4. Particulars filled in the Table C should be verified and certified as true by the statutory auditor of the SEZ Unit/Developer

-----I/We Declare that-

1. information given in this application for refund is true, correct and complete in every respect and that I am authorised to sign this application for refund of service tax;
2. the specified services, as approved by the Approval Committee of SEZ, on which exemption/refund is claimed are actually used for the authorised operations in a SEZ;
3. refund is being claimed only on the service tax actually paid on the specified services used for the authorised operations in a SEZ; refund of service tax has not been claimed or received earlier, on the basis of above documents/information;
4. We have not taken any CENVAT credit of service tax paid on the specified services under the CENVAT Credit Rules, 2004;

5. accounts or documents furnished as proof of payment of service tax being claimed as refund, as per the invoice, bill or challan of the service provider indicating the service tax paid on such specified services, are true and correct in all respects;
6. proper account of receipt and use of the specified services on which exemption/refund is claimed, for the authorised operations in the SEZ, is maintained and the same shall be produced to the Officer sanctioning refund, on demand.

**Signature and name**

**(of proprietor/managing partner/  
person authorised by managing director of SEZ Unit/Developer)  
with complete address, telephone and e-mail**

Date:

Place:

**FORM A-3**

**DECLARATION FOR OBTAINING SERVICE TAX CODE**

**[Refer clause (c) under paragraph 3]**

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with Telephone and Email:
3. Address of the Registered/Head Office:
4. Permanent Account Number(PAN) of the SEZ Unit/Developer:
5. Import and Export Code Number:
6. Jurisdictional Central Excise/Service Tax Division:
7. Service Tax Registration Number/Service tax Code:
8. Details of Bank Account ( Bank, Address of Branch, Account Number)
9. (a) Constitution of SEZ Unit/Developer [  
proprietorship/partnership/Registered Private Limited Company/Registered Public Limited Company/Others(specify)]  
(b) Name, Address, Telephone number of Proprietor/partner/director(s)

10.Name, designation and address of the authorised signatory/signatories

11.I/We hereby declare that-

1. The information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the SEZ Unit/Developer;
2. I/We shall maintain proper account of specified services as approved by the Approval Committee of SEZ, received and used for authorised operations in SEZ; and shall make available such accounts and related records, at all reasonable times, to the Department for inspection or scrutiny.
3. I/We shall use/have used specified services for authorised operations in the SEZ.

Signature and Name of Authorised Person with stamp

Date:

Place:

## **41/2012 - REBATE FOR SERVICE TAX PAID – NEW SCHEME**

### **Not. No. 41/2012-ST dated 29 June 2012**

In exercise of the powers conferred by section 93A of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 52/2011-Service Tax, dated the 30th December, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 945(E), dated the 30th December, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid (hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to the extent and manner specified herein below, namely :-

Provided that -

(a) the rebate shall be granted by way of refund of service tax paid on the specified services.

*Explanation.* - For the purposes of this notification,-

(A) "specified services" means -

- (i) in the case of excisable goods, taxable services that have been used beyond the place of removal, for the export of said goods;
- (ii) in the case of goods other than (i) above, taxable services used for the export of said goods;

but shall not include any service mentioned in sub-clauses (A), (B), (BA) and (C) of clause (I) of rule (2) of the CENVAT Credit Rules, 2004;

- (B) "place of removal" shall have the meaning assigned to it in section 4 of the Central Excise Act, 1944 (1 of 1944);
- (b) the rebate shall be claimed either on the basis of rates specified in the Schedule of rates annexed to this notification (hereinafter referred to as the Schedule), as per the procedure specified in paragraph 2 or on the basis of documents, as per the procedure specified in paragraph 3;
  - (c) the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2;
  - (d) no CENVAT credit of service tax paid on the specified services used for export of goods has been taken under the CENVAT Credit Rules, 2004;
  - (e) the rebate shall not be claimed by a unit or developer of a Special Economic Zone;
- (2) the rebate shall be claimed in the following manner, namely :-
- (a) manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder shall register his central excise registration number and bank account number with the customs;
  - (b) exporter who is not so registered under the provisions referred to in clause (a), shall register his service tax code number and bank account number with the customs;
  - (c) service tax code number referred to in clause (b), shall be obtained by filing a declaration in Form A-2 to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;

- (d) the exporter shall make a declaration in the electronic shipping bill or bill of export, as the case may be, while presenting the same to the proper officer of customs, to the effect that --
- (i) the rebate of service tax paid on the specified services is claimed as a percentage of the declared Free On Board (FOB) value of the said goods, on the basis of rate specified in the Schedule;
- (ii) no further rebate shall be claimed in respect of the specified services, under procedure specified in paragraph 3 or in any other manner, including on the ground that the rebate obtained is less than the service tax paid on the specified services;
- (iii) conditions of the notification have been fulfilled;
- (e) service tax paid on the specified services eligible for rebate under this notification, shall be calculated by applying the rate prescribed for goods of a class or description, in the Schedule, as a percentage of the FOB value of the said goods;
- (f) amount so calculated as rebate shall be deposited in the bank account of the exporter;
- (g) shipping bill or bill of export on which rebate has been claimed on the basis of rate specified in the Schedule, by way of procedure specified in this paragraph, shall not be used for rebate claim on the basis of documents, specified in paragraph 3;
- (h) where the rebate involved in a shipping bill or bill of export is less than rupees fifty, the same shall not be allowed;
- (3) the rebate shall be claimed in the following manner, namely :-
  - (a) rebate may be claimed on the service tax actually paid on any specified service on the basis of duly certified documents;

- (b) the person liable to pay service tax under section 68 of the said Act on the taxable service provided to the exporter for export of goods shall not be eligible to claim rebate under this notification;
- (c) the manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall file a claim for rebate of service tax paid on the taxable service used for export of goods to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture in Form A-1;
- (d) the exporter who is not so registered under the provisions referred to in clause (c), shall before filing a claim for rebate of service tax, file a declaration in Form A-2, seeking allotment of service tax code, to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, of such exporter;
- (e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the exporter referred to in clause (d), within seven days from the date of receipt of the said Form A-2;
- (f) on obtaining the service tax code, exporter referred to in clause (d), shall file the claim for rebate of service tax to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the registered office or the head office, as the case may be, in Form A-1;
- (g) the claim for rebate of service tax paid on the specified services used for export of goods shall be filed within one year from the date of export of the said goods.

*Explanation.* - For the purposes of this clause the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance



and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);

- (h) where the total amount of rebate sought under a claim is upto 0.50% of the total FOB value of export goods and the exporter is registered with the Export Promotion Council sponsored by Ministry of Commerce or Ministry of Textiles, Form A-1 shall be submitted along with relevant invoice, bill or challan, or any other document for each specified service, in original, issued in the name of the exporter, evidencing payment for the specified service used for export of the said goods and the service tax paid thereon, certified in the manner specified in sub-clauses (A) and (B) :
  - (A) if the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be self-certified by the exporter and if the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;
  - (B) the documents enclosed with the claim shall also contain a certificate from the exporter or the person authorised by the Board of Directors, to the effect that specified service to which the document pertains has been received, the service tax payable thereon has been paid and the specified service has been used for export of the said goods under the shipping bill number;
- (i) where the total amount of rebate sought under a claim is more than 0.50% of the total FOB value of the goods exported, the procedure specified in clause (h) above shall stand modified to the extent that the certification prescribed thereon, in sub-clauses (A) and (B) shall be made by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961 (43 of 1961), as the case may be;
- (j) where the rebate involved in a claim is less than rupees five hundred, the same shall not be allowed;

- (k) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself,-
- (i) that the service tax rebate claim filed in Form A-1 is complete in every respect;
  - (ii) that duly certified documents have been submitted evidencing the payment of service tax on the specified services ;
  - (iii) that rebate has not been already received on the shipping bills or bills of export on the basis of procedure prescribed in paragraph 2; and
  - (iv) that the rebate claimed is arithmetically accurate,

refund the service tax paid on the specified service within a period of one month from the receipt of said claim :

Provided that where the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, has reason to believe that the claim, or the enclosed documents are not in order or that there is a reason to deny such rebate, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made thereunder;

- (4) Where any rebate of service tax paid on the specified services has been allowed to an exporter on export of goods but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such rebate shall be deemed never to have been allowed and may be recovered under the provisions of the said Act and the rules made thereunder;
- (5) This notification shall come into effect on the 1st day of July, 2012.

### **Form A-1**

#### **Application for claiming rebate of service tax paid on specified services**

**used for export of goods, under Notification No.\_\_\_\_ / 20\_\_-ST**

To,

The Deputy/Assistant Commissioner of Central Excise

Sir,

I/We claim rebate of Rs..... (Rupees in words), under Notification No.\_\_\_\_ dated\_\_\_\_ , in respect of service tax paid on the specified services used for export of goods.

1. Name of the exporter:
2. Membership number of the Export Council:
3. Name of the Export Council:
4. Address of the registered / head office of exporter:
5. Telephone Number and e-mail ID of the exporter:
6. Division ..... Commissionerate .....
7. Central Excise Registration Number (for manufacturer exporter) / Service Tax Code Number (for exporters other than manufacturer exporter)
8. Import Export Code Number.....
9. Details of Bank Account (Name of Bank, branch address and account number)
10. Details of the rebate claim (separately for each Shipping Bill) :

(Rupees in thousands)

S. No.	Details of specified services used for export of goods on which rebate of service tax is claimed
--------	--------------------------------------------------------------------------------------------------

(1)	Details of shipping bill/ bill of export, etc. (2)			Details of goods exported (3)					
	No.	Date	Date of Let Export Order	Bill of Lading or Airway Bill Number	Date.	Description of goods exported	Quantity	Unit	FOB value
(4)	Details of specified services used for export of goods mentioned in Columns 2 and 3. (4)						Documents attached to evidence the amount of service tax paid and establish the use of specified service in the export of goods. (5)	Total amount of service tax paid which is claimed as rebate. (6)	
Name of service	Service Tax	Invo- ice No	Da t	Descrip- tion of	Value of specifie	Total amount of		In Figur	As a

provider	Registra- -tion No./ Service Tax Code	(pl.attac- -h origin- nal invoic e)	e.	specifie d service as per the invoice	d service used for export of goods as per the invoice	service tax paid.		-es.	perc- ent- age of f.o.b . valu e in ship p ing bill

9. Declaration :-

I/We hereby declare that -

- (i) the information given in this application form is true, correct and complete in every respect, in accordance with the notification and that I am authorised to sign on behalf of the exporter; electronic rebate of service tax has not been received from customs on the shipping bills on which rebate is claimed;
- (ii) no CENVAT credit of service tax paid on the specified services used for export of goods has been taken/shall be taken under the CENVAT Credit Rules, 2004;
- (iii) rebate has been claimed for service tax which has been actually paid on the specified services used for export of goods;
- (iv) I/we shall maintain records pertaining to the specified services used for export of goods and shall make available, at the declared premises, at all

reasonable time, such records for inspection and examination by the Central Excise Officer authorised in writing by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be.

Date:

Place:

*Signature and full address of Exporter*

*(Affix stamp)*

## **Form A-2**

### **Declaration by an exporter, for obtaining Service Tax Code**

*(referred under paragraph 2 (c) and 3(d) of Notification No. \_\_\_\_ /20\_\_ - ST*

*dated \_\_\_\_\_)*

1. Name of the exporter:
2. Address of the registered office or head office of the Exporter :
3. Permanent Account Number (PAN) of the Exporter :
4. Import Export Code (IEC) of the Exporter :
5. Details of Bank Account of the Exporter :
  - (a) Name of the Bank :
  - (b) Name of the Branch :
  - (c) Account Number :
6. (a) Constitution of Exporter [Proprietorship /Partnership/ Registered Private Limited Company /Registered Public Limited Company /Others (specify)]
  - (b) Name, address and telephone number of proprietor/partner/ director

7. Name, designation and address of the authorised signatory/ signatories:

8. I / We hereby declare that-

(i) the information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the exporter;

(ii) I / we shall maintain records pertaining to specified services used for export of goods and shall make available, at the declared premises, at all reasonable time, such records for inspection and examination by the Central Excise Officer authorised in writing by the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be.

*(Signature of the applicant/authorised person with stamp)*

Date:

Place:

### **Schedule of rates**

The Chapter or sub-Heading and descriptions of goods in the following Schedule are aligned with the tariff items and descriptions of goods in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). The General Rules for the Interpretation of the First Schedule to the said Customs Tariff Act, 1975 shall *mutatis mutandis* apply for classifying the export goods listed in the Schedule.

<b>Sl. No.</b>	<b>Chapter or sub-Heading No.</b>	<b>Description of goods</b>	<b>Rate</b>
(1)	(2)	(3)	(4)
1	01	Live animal	Nil
2	02	Meat and edible meat offal	0.12
3	03	Fish and crustaceans, molluscs and other aquatic invertebrates	0.12
4	04	Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	0.12
5	05	Product of animal origin not elsewhere specified or included.	0.12

6	06	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage	0.12
7	07	Edible vegetables and certain roots and tubers	0.12
8	08	Edible fruits and nuts, peel of citrus fruit or melons	0.12
9	09	Coffee, tea, mate and spices	0.12
10	10	Cereals	0.12
11	11	Products of the milling industry; malt; starches; inulin; wheat gluten.	0.12
12	12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial and medicinal plants; straw and fodder	0.12
13	13	Lac; gums, resins and other vegetable saps and extracts	0.12
14	14	Vegetable plaiting materials; vegetable products, not elsewhere specified or included.	0.12
15	15	Animal or vegetable fats and oils and their cleavage products prepared edible fats; animal or vegetable waxes	0.12
16	16	Preparations of meat, or fish or of crustaceans, molluscs or other aquatic invertebrates	0.12
17	17	Sugars and sugar confectionery	0.12
18	18	Cocoa and cocoa preparations	0.12
19	19	Preparations of cereals, flour, starch or milk; pastry cooks' products	0.12
20	20	Preparation of vegetables, fruits, nuts or other parts of plants	0.20
21	21	Miscellaneous edible preparations	0.12
22	2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter not flavoured; ice and snow	0.12
23	2202	Waters, including mineral waters and aerated waters containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009	0.12
24	2203	Beer made from malt	0.12
25	2204	Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009	0.12
26	2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances	0.12
27	2206	Other fermented beverages (for example cider, perry, mead); mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included	0.12



28	2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher; ethyl alcohol and other spirits, denatured, of any strength	0.12
29	2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol.; spirit, liquors and other spirituous beverages	0.12
30	2209	Vinegar and substitutes for vinegar obtained from acetic acid	0.12
31	23	Residues and waste from the food industries; prepared animal fodder	0.06
32	24	Tobacco and manufactured tobacco substitutes	0.04
33	25	Salt; sulphur; earths and stone; plastering materials, lime and cement	0.12
34	26	Ores, slag and ash	0.20
35	27	Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	Nil
36	28	Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes	0.12
37	29	Organic chemicals	0.12
38	30	Pharmaceutical products	0.20
39	31	Fertilizers	Nil
40	32	Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	0.04
41	33	Essential oils and resinoids; perfumery, cosmetic or toilet preparations	0.12
42	34	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modeling pastes, "dental waxes" and dental preparations with a basis of plaster	0.12
43	35	Albuminoidal substances; modified starches; glues; enzymes	0.12
44	36	Explosives	0.12
45	37	Photographic or cinematographic goods	0.12
46	38	Miscellaneous chemical products	0.12
47	39	Plastics and articles thereof	0.12
48	40	Rubber and articles thereof	0.06
49	41	Raw hides and skins (other than fur skins) and leather	0.04

50	4201	Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material	0.12
51	4202	Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverages bags, toilet bags, rucksacks, handbags, shopping-bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paper-board, or wholly or mainly covered with such materials or with paper	0.12
52	4203	Articles of apparel and clothing accessories, of leather or of composition leather	0.12
53	4204	Omitted	-
54	4205	Other articles of leather or of composition leather	0.12
55	4206	Articles of gut (other than silk-worm gut), of goldbeater's skin, of bladders or of tendons	0.12
56	4301	Raw fur skins (including heads, tails, paws and other pieces or cuttings, suitable for furriers' use), other than raw hides and skins of headings 4101, 4102 or 4103	Nil
57	4302	Tanned or dressed fur skins (including heads, tails, paws and other pieces or cuttings), unassembled, or assembled (without the addition of other materials) other than those of heading 4303	0.12
58	4303	Articles of apparel, clothing accessories and other articles of fur skin	0.12
59	4304	Artificial fur and articles thereof	0.12
60	4401	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms	Nil
61	4402	Wood charcoal (including shell or nut charcoal), whether or not agglomerated	Nil
62	4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared	Nil
63	4404	Hoop wood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking sticks, umbrellas, tool handles or the like; chip wood and the like	Nil
64	4405	Wood wool; wood flour	Nil

65	4406	Railway or tramway sleepers (crossties) of wood	Nil
66	4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end jointed, of a thickness exceeding 6 mm	Nil
67	4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm	0.12
68	4409	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, v-jointed, beaded, moulded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or end-jointed	0.12
69	4410	Particle board, oriented strand board (OSB) and similar board (for example wafer board) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances	0.12
70	4411	Fiberboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances	0.12
71	4412	Plywood, veneered panels and similar laminated wood	0.12
72	4413	Densified wood, in blocks, plates, strips or profile shapes	0.12
73	4414	Wooden frames for paintings, photographs, mirrors or similar objects	0.12
74	4415	Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, Box pallets and other load boards, of wood; pallet collars of wood	0.12
75	4416	Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves	0.12
76	4417	Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood	0.12
77	4418	Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, Shingles and shakes	0.12
78	4419	Tableware and kitchenware, of wood	0.12
79	4420	Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in chapter 94	0.12
80	4421	Other articles of wood	0.12
81	45	Cork and articles of cork	Nil
82	46	Manufactures of straw, of esparto or of other plaiting materials; basket-ware and wickerwork.	0.12

83	47	Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard	Nil
84	4801	Newsprint, in rolls or sheets	0.12
85	4802	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punch card and punch tape paper, in rolls or rectangular (including square) sheets of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard	0.12
86	4803	Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibres, whether or not creped, crinkled, embossed, perforated, surface-coloured, surface-decorated or printed, in rolls or sheets	0.12
87	4804	Uncoated craft paper and paperboard, in rolls or sheets, other than that of heading 4802 or 4803	0.12
88	4805	Other uncoated paper and paperboard, in rolls or sheets, not further worked or processed than as specified in Note 3 to this Chapter	0.12
89	4806	Vegetable parchment, greaseproof papers, tracing papers and glassine and other glazed transparent or translucent papers, in rolls or sheets	0.12
90	4807	Composite paper and paperboard (made by sticking flat layers of paper or paperboard together with an adhesive), not surface-coated or impregnated, whether or not internally reinforced, in rolls or sheets	0.12
91	4808	Paper and paperboard, corrugated (with or without glued flat surface sheets), creped, crinkled, embossed or perforated, in rolls or sheets, other than paper of the kind described in heading 4803	0.12
92	4809	Carbon paper, self-copy paper and other copying or transfer papers (including coated or impregnated paper for duplicator stencils or offset plates), whether or not printed, in rolls or sheets	0.12
93	4810	Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size	0.12
94	4811	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810	0.12
95	4812	Filter blocks, slabs and plates, of paper pulp	0.12
96	4813	Cigarette paper, whether or not cut to size or in the form of booklets or tubes	0.12

97	4814	Wallpaper and similar wall coverings; window transparencies of paper	0.12
98	4815	Omitted	-
99	4816	Carbon-paper, self-copy paper and other copying or transfer papers (other than those of heading 4809), duplicator stencils and offset plates, of paper, whether or not put up in boxes	0.12
100	4817	Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery	0.18
101	4818	Toilet paper and similar paper, cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, table cloths, serviettes, napkins for babies, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibres	0.18
102	4819	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like	0.18
103	4820	Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, excise books, blotting-pads, binders (loose-leaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers, of paper or paperboard	0.18
104	4821	Paper or paperboard labels of all kinds, whether or not printed	0.18
105	4822	Bobbins, spools, cops and similar supports of paper pulp, paper or paperboard (whether or not perforated or hardened)	0.18
106	4823	Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres	0.18
107	49	Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	0.12
108	50	Silk	0.12
109	51	Wool, fine or coarse animal hair, horsehair yarn and woven fabrics	0.12
110	5201	Cotton, not carded or combed	0.04
111	5202	Cotton waste (including yarn waste and garnetted stock)	0.04

112	5203	Cotton, carded or combed	0.04
113	5204	Cotton sewing thread, whether or not put up for retail sale	0.04
114	5205	Cotton yarn (other than sewing thread), containing 85% or more by weight of cotton, not put up for retail sale	0.06
115	5206	Cotton yarn (other than sewing thread), containing less than 85% by weight of cotton, not put up for retail sale	0.06
116	5207	Cotton yarn (other than sewing thread) put up for retail sale	0.06
117	5208	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200 g/m <sup>2</sup>	0.12
118	5209	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing more than 200 g/m <sup>2</sup>	0.12
119	5210	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200 g/m <sup>2</sup>	0.12
120	5211	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing more than 200 g/m <sup>2</sup>	0.12
121	5212	Other woven fabrics of cotton	0.12
122	53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	0.12
123	5401	Sewing thread of man-made filaments, whether or not put up for retail sale	0.06
124	5402	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex	0.06
125	5403	Artificial filament yarn (other than sewing thread), not put for retail sale, including artificial mono filament of less than 67 decitex	0.06
126	5404	Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm	0.06
127	5405	Artificial monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of artificial textile materials of an apparent width not exceeding 5 mm	0.06
128	5406	Man-made filament yarn (other than sewing thread), put up for retail sale	0.06
129	5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404	0.12
130	5408	Woven fabrics of artificial filament yarn, including woven fabrics	0.12

		obtained from materials of heading 5405	
131	5501	Synthetic filament tow	0.06
132	5502	Artificial filament tow	0.06
133	5503	Synthetic staple fibres, not carded, combed or otherwise processed for spinning	0.06
134	5504	Artificial staple fibres, not carded, combed or otherwise processed for spinning	0.06
135	5505	Waste (including noils, yarn waste and garneted stock) of man-made fibres	0.06
136	5506	Synthetic staple fibres, carded, combed or otherwise processed for spinning	0.06
137	5507	Artificial staple fibres, carded, combed or otherwise processed for spinning	0.06
138	5508	Sewing thread of man-made staple fibres, whether or not put up for retail sale	0.06
139	5509	Yarn (other than sewing thread) of synthetic staple fibres, not put up for retail sale	0.06
140	5510	Yarn (other than sewing thread) of artificial staple fibres, not put up for retail sale	0.06
141	5511	Yarn (other than sewing thread) of man-made staple fibres, put up for retail sale	0.06
142	5512	Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres	0.12
143	5513	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight not exceeding 170g/m <sup>2</sup>	0.12
144	5514	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight exceeding 170 g/m <sup>2</sup>	0.12
145	5515	Other woven fabrics of synthetic staple fibres	0.12
146	5516	Woven fabrics of artificial staple fibres	0.12
147	56	Wadding, felt and non-woven; special yarns; twine, cordage, ropes and cables and articles thereof	0.12
148	57	Carpets and other textile floor coverings	0.12
149	58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	0.12
150	59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	0.12

151	60	Knitted or crocheted fabrics	0.12
152	61	Articles of apparel and clothing accessories, knitted or crocheted	0.18
153	62	Articles of apparel and clothing accessories, not knitted or crocheted	0.18
154	63	Other made up textiles articles; sets; worn clothing and worn textile articles; rags	0.18
155	64	Footwear, gaiters and the like; parts of such articles	0.12
156	65	Headgear and parts thereof	0.06
157	66	Umbrellas, sun umbrellas, walking-sticks, whips, riding-crops and parts thereof	0.04
158	67	Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair	0.12
159	68	Articles of stone, plaster, cement, asbestos, mica or similar materials	0.18
160	69	Ceramic products	0.18
161	70	Glass and glassware	0.18
162	71	Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metals, and articles thereof; imitation jewellery; coin	0.06
163	7201	Pig iron and spiegeleisen in pigs, blocks or other primary forms	0.08
164	7202	Ferro alloys	0.08
165	7203	Ferrous products obtained by direct reduction of iron ore and other spongy ferrous products, in lumps, pellets or similar forms; iron having minimum purity by weight of 99.94%, in lumps, pellets or similar forms	0.08
166	7204	Ferrous waste and scrap; remelting scrap ingots of iron or steel	0.08
167	7205	Granules and powders, of pig iron, spiegeleisen, iron or steel	0.08
168	7206	Iron and non-alloy steel in ingots or other primary forms (excluding iron of heading 7203)	0.08
169	7207	Semi-finished products of iron or non-alloy steel	0.08
170	7208	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated	0.08
171	7209	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated	0.08
172	7210	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated	0.08
173	7211	Flat-rolled products of iron or non-alloy steel, of a width of less	0.08



		than 600 mm, not clad, plated or coated	
174	7212	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, clad, plated or coated	0.08
175	7213	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel	0.08
176	7214	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling	0.08
177	7215	Other bars and rods of iron or non-alloy steel	0.08
178	7216	Angles, shapes and sections of iron or non-alloy steel	0.08
179	7217	Wire of iron or non-alloy steel	0.08
180	7218	Stainless steel in ingots or other primary forms; semi-finished products of stainless steel	0.08
181	7219	Flat-rolled products of stainless steel, of a width of 600 mm or more	0.08
182	7220	Flat-rolled products of stainless steel, of a width of less than 600 mm	0.08
183	7221	Bars and rods, hot-rolled, in irregularly wound coils, of stainless steel	0.08
184	7222	Other bars and rods of stainless steel; angles, shapes and sections of stainless steel	0.08
185	7223	Wire of stainless steel	0.08
186	7224	Other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel	0.08
187	7225	Flat-rolled products of other alloy steel, of a width of 600 mm or more	0.08
188	7226	Flat-rolled products of other alloy steel, of a width of less than 600 mm	0.08
189	7227	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel	0.08
190	7228	Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel	0.08
191	7229	Wire of other alloy steel	0.08
192	7301	Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections, of iron or steel	0.08
193	7302	Railway or tramway track construction material of iron or steel, the following: rails, check-rails and rack rails, switch blades, crossing frogs, point rods and other crossing pieces, sleepers	0.08

		(cross-ties), fish-plates, chairs, chair wedges, sole plates (base plates), rail clips, bedplates, ties and other material specialized for jointing or fixing rails	
194	7303	Tubes, pipes and hollow profiles, of cast iron	0.08
195	7304	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel	0.08
196	7305	Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm, of iron or steel	0.08
197	7306	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel	0.08
198	7307	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel	0.08
199	7308	Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel	0.08
200	7309	Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.08
201	7310	Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.08
202	7311	Containers for compressed or liquefied gas, of iron or steel	0.08
203	7312	Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated	0.08
204	7313	Barbed wire of iron or steel; twisted hoop or single flat wire, barbed or not, and loosely twisted double wire, of a kind used for fencing of iron or steel	0.08
205	7314	Cloth (including endless bands), Grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel	0.08
206	7315	Chain and parts thereof, of iron or steel	0.08
207	7316	Anchors, grapnels and parts thereof, of iron or steel	0.08
208	7317	Nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper	0.08

209	7318	Screws, bolts, nuts, coach-screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel	0.08
210	7319	Sewing needles, knitting needles, bodkins, crochet hooks, embroidery stiletos and similar articles, for use in the hand, of iron or steel; safety pins and other pins, of iron or steel, not elsewhere specified or included	0.08
211	7320	Springs and leaves for springs, of iron or steel	0.08
212	7321	Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel	0.08
213	7322	Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel	0.08
214	7323	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel	0.08
215	7324	Sanitary ware and parts thereof, of iron or steel	0.08
216	7325	Other cast articles of iron or steel	0.08
217	7326	Other articles of iron and steel	0.08
218	7401	Copper mattes; cement copper (precipitated copper)	0.08
219	7402	Unrefined copper; copper anodes for electrolytic refining	0.08
220	7403	Refined copper and copper alloys, unwrought	0.08
221	7404	Copper waste and scrap	0.08
222	7405	Master alloys of copper	0.08
223	7406	Copper powders and flakes	0.08
224	7407	Copper bars, rods and profiles	0.08
225	7408	Copper wire	0.08
226	7409	Copper plates, sheets and strip, of a thickness exceeding 0.15 mm	0.08
227	7410	Copper foil (whether or not printed or backed with paper, per board, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.15 mm	0.08
228	7411	Copper tubes and pipes	0.08
229	7412	Copper tube or pipe fittings (for example, couplings, elbows, sleeves)	0.08

230	7413	Stranded wire, cables, plated bands and the like, of copper, not electrically insulated	0.08
231	7414	Omitted	-
232	7415	Nails, tacks, drawing pins, staples (other than those of heading 8305) and similar articles, of copper or of iron or steel with heads of copper; screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of copper	0.08
233	7416	Omitted	-
234	7417	Omitted	-
235	7418	Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper	0.08
236	7419	Other articles of copper	0.08
237	75	Nickel and articles thereof	0.08
238	7601	Unwrought aluminium	0.08
239	7602	Aluminium waste and scrap	0.08
240	7603	Aluminium powders and flakes	0.08
241	7604	Aluminium bars, rods and profiles	0.08
242	7605	Aluminium wire	0.08
243	7606	Aluminium plates, sheets and strip, of a thickness exceeding 0.2 mm	0.08
244	7607	Aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm	0.08
245	7608	Aluminium tubes and pipes	0.08
246	7609	Aluminium tube or pipe fittings (for example, couplings, elbows, sleeves)	0.08
247	7610	Aluminium structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures	0.08
248	7611	Aluminium reservoirs, tanks, vats and similar containers, for any material (other than compressed or liquefied gas), of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	0.08
249	7612	Aluminium casks, drums, cans, boxes and similar containers (including rigid or collapsible tubular containers), for any material (other than compressed or liquefied gas), of a capacity not	0.08

		exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	
250	7613	Aluminium containers for compressed or liquefied gas	0.08
251	7614	Stranded wire, cables, plaited bands and the like, of aluminium, not electrically insulated	0.08
252	7615	Table, kitchen or other household articles and parts thereof, of aluminium; pot scourers and scouring or polishing pads, gloves and the like, of aluminium; sanitary ware and parts thereof, of aluminium	0.08
253	7616	Other articles of aluminium	0.08
254	78	Lead and articles thereof	0.06
255	79	Zinc and articles thereof	0.06
256	80	Tin and articles thereof	0.06
257	81	Other base metals; cermets, articles thereof	0.06
258	82	Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	0.12
259	83	Miscellaneous articles of base metal	0.12
260	84	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	0.08
261	85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	0.08
262	86	Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signaling equipment of all kinds	0.06
263	8701	Tractors (other than tractors of heading 8709)	0.06
264	8702	Motor vehicles for the transport of ten or more persons, including the driver	0.06
265	8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars	0.06
266	8704	Motor vehicles for the transport of goods	0.06
267	8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixers lorries, spraying lorries, mobile workshops, mobile radiological units)	0.06
268	8706	Chassis fitted with engines, for the motor vehicles of headings 8701 to 8705	0.06

269	8707	Bodies (including cabs), for the motor vehicles of headings 8701 to 8705	0.06
270	8708	Parts and accessories of the motor vehicles of headings 8701 to 8705	0.06
271	8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles	0.06
272	8710	Tanks and other armoured fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles	0.06
273	8711	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars;	0.06
274	8712	Bicycles and other cycles (including delivery tricycles), not motorised	0.12
275	8713	Carriages for disabled persons, whether or not motorised or otherwise mechanically propelled	0.06
276	8714	Parts and accessories of vehicles of headings 8711 to 8713	0.12
277	8715	Baby carriages and parts thereof	0.06
278	8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof	0.06
279	88	Aircraft, spacecraft, and parts thereof	0.06
280	89	Ships, boats and floating structures	0.06
281	90	Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	0.12
282	91	Clocks and watches and parts thereof	0.06
283	92	Musical instruments; parts and accessories of such articles	0.20
284	93	Arms and ammunition; parts and accessories thereof	Nil
285	94	Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings	0.06
286	95	Toys, games and sports requisites; parts and accessories thereof	0.20
287	96	Miscellaneous manufactured articles	0.06
288	97	Works of art, collector's pieces and antiques	Nil

**Form EXP3**

[See item (i) of clause (a) of proviso ]

S.No-----

(to be filled in by the office of jurisdictional Assistant / Deputy  
Commissioner)

To,

The Deputy Commissioner /Assistant Commissioner of Central  
Excise

Sir,

I/We intend to avail of the exemption from service tax under  
Notification No. .../2012-ST, dated ....June, 2012 in respect of  
services provided by a commission agent located outside India,  
which have been used for export of goods and the relevant  
particulars are as follows :

.

1. Name of the exporter.....
2. Service Tax Registration No.....
3. Division ..... Commissionerate .....
- 4 Membership No. the Export Council.....
- 5 Name of the Export Council.....
6. Address of the registered / head office of exporter:.....
7. Tel. No. and e-mail ID of the exporter.....:
8. Import -Export Code No.....
9. Details of Bank Account (Name of Bank, branch address and  
account number).....

I/we undertake that I/we shall comply with the conditions laid  
down in the said notification and in case of any change in  
aforementioned particulars; I/We shall intimate the same.

Date:.....

Place:.....

Signature and full address of Exporter  
(Affix stamp)

Receipt (to be given by office of Assistant Commissioner/ Deputy Commissioner having jurisdiction) Received Form EXP1 dated --/--/-- submitted by \_\_\_\_\_( name of the exporter). The said intimation is accepted and given acknowledgment No. \_\_\_\_\_( S. No. Above)

For Assistant, / Deputy Commissioner  
(Stamp)

#### **Form EXP4**

[See clause (c) of proviso]

To,

The Deputy Commissioner /Assistant Commissioner of Central  
Excise

Sir,

I/We have availed of exemption of service tax under Notification No. .../2012-ST, dated ....., 2012 in respect of services provided by a commission agent, located outside India and have used the same for export of goods and the relevant particulars are as follows:

1. Name of the exporter.....
2. Address of the registered / head office of exporter.....
3. Tel. No. and e-mail ID of the exporter.....:
4. Service Tax Registration No.....
5. Division ..... Commissionerate .....
6. Membership No. Of the Export Council.....
7. Import Export Code No.....
8. Name of the Export Council.....



9. Details of Bank Account (Name of Bank, branch address and account number).....

**Table-A**

Sr. No.	Details of goods exported (on which exemption of service tax availed) during the six months ending on.....							
Details of Shipping Bill/ Bill of export (Please enclose self attested copy of Shipping Bill or Bill of Export) and Details of goods exported (in case of exports of more than one commodity, please fill in the proforma, commodity-wise)								
	No.	Date	Date of Let export order	Export invoice no	Date	Description of goods exported	Quantity (please mention the unit)	FOB value (in rupees in lakh)

**Table- B**

Details of specified service used for export of goods, covered under the Shipping Bill or Bill of Export mentioned in Table A in respect of which the exemption has been availed during the six months ending on.....				Details of documents attached showing the use of such service for export, the details of which are mentioned in Table A (self attested)		Total amount of service tax claimed as exemption (rupees in lakhs)	
Name of	Address of	Invoice	Date				

service provider	service provider	No.			

9. Declaration:-

I / We hereby declare that-

(i) I have complied with all the conditions mentioned in Notification No. .../2012-ST, dated ... June, 2012;

(ii) the information given in this application form is true, correct and complete in every respect and that I am authorised to sign on behalf of the exporter;

(iii) no CENVAT credit of service tax paid on the specified service used for export of said goods taken under the CENVAT Credit Rules, 2004;

(iv) I / we, am/ are enclosing all the required documents. Further, I understand that failure to file the return within stipulated time or non-enclosure of the required document, duly certified, would debar me/us for the refund claimed aforesaid.

Date:.....

Place:.....

**Signature and full address of Exporter  
(Affix stamp)**

**Notification No. 27/2012-C.E. (N.T.), dated 18-6-2012**

**Cenvat credit — Procedure for Refund — Notification No. 5/2006-C.E. (N.T.)  
superseded**

In exercise of the powers conferred by rule 5 of the CENVAT Credit Rules, 2004 (hereinafter referred to as the "said rules"), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 5/2006-Central Excise (N.T.), dated the 14th March, 2006, published in Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R 156(E), dated the 14th March, 2006, the Central Board of Excise and Customs hereby directs that refund of CENVAT credit shall be allowed subject to the procedure, safeguards, conditions and limitations as specified below, namely :-

**2. Safeguards, conditions and limitations.** - Refund of CENVAT Credit under rule 5 of the said rules, shall be subjected to the following safeguards, conditions and limitations, namely :-

- (a) the manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter :  
*Provided* that a person exporting goods and service simultaneously, may submit two refund claims one in respect of goods exported and other in respect of the export of services every quarter.
- (b) in this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.
- (c) the value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.
- (d) the total value of goods cleared during the quarter shall be the sum total of value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.
- (e) in respect of the services, for the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.
- (f) for the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.
- (g) the amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.
- (h) the amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.
- (i) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.

**3. Procedure for filing the refund claim.** - (a) The manufacturer or provider of output service, as the case may be, shall submit an application in *Form A* annexed to the notification,

to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, in whose jurisdiction,-

- (i) the factory from which the final products are exported is situated.
- (ii) the registered premises of the provider of service from which output services are exported is situated.

(b) The application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed shall be filed by the claimant, before the expiry of the period specified in section 11B of the Central Excise Act, 1944 (1 of 1944).

- (c) The application for the refund should be signed by-
  - (i) the individual or the proprietor in the case of proprietary firm or karta in case of Hindu Undivided Family as the case may be;
  - (ii) any partner in case of a partnership firm;
  - (iii) a person authorized by the Board of Directors in case of a limited company;
  - (iv) in other cases, a person authorized to sign the refund application by the entity.

(d) The applicant shall file the refund claim along with the copies of bank realization certificate in respect of the services exported.

(e) The refund claim shall be accompanied by a certificate in *Annexure A-I*, duly signed by the auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services.

(f) The Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim.

(g) At the time of sanctioning the refund claim the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported and allow the claim of exporter of goods or services in full or part as the case may be.

*Annexure*

**FORM A**

**Application for refund of CENVAT Credit under rule 5 of the CENVAT Credit Rules, 2004 for the Quarter ending**

d	d	m	m	y	y	y	y
---	---	---	---	---	---	---	---

To,  
 The Assistant Commissioner or Deputy Commissioner of Central Excise,  
 .....

Sir,

I/We have exported, the final products or output services during the Quarter and am/are claiming the refund of CENVAT Credit in terms of Rule 5 of the CENVAT Credit Rules, 2004 as per the details below :

S. No.	Description	Amount in Rs.
1.	Total value of the goods cleared for export and exported during the quarter.	
2.	Export turnover of the services determined in terms of Clause D of sub-rule (1) of rule 5.	
3.	Total CENVAT Credit taken on inputs and input services during the quarter.	
4.	Amount reversed in terms of sub-rule (5C) of rule 3	

5.	Net CENVAT Credit = (3) - (4)	
6.	Total value of all goods cleared during the quarter including exempted goods, dutiable goods and goods for export.	
7.	Export turnover of services and value of all other services, provided during the said quarter.	
8.	All inputs removed as such under sub-rule (5) of rule 3, against an invoice during the quarter.	
9.	Total Turnover = (6) + (7) + (8)	
10.	Refund amount as per the formula = (1) * (5)/(9), in respect of goods exported.	
11.	Refund amount as per the formula = (2) * (5)/(9), in respect of services exported.	
12.	Balance of CENVAT Credit available on the last day of quarter.	
13.	Balance of CENVAT Credit available on the day of filing the refund claim.	
14.	Amount claimed as refund, [Amount shall be less than the minimum of (10), (12) and (13) in case of goods or the minimum of (11), (12) and (13) in case of services]	
15.	Amount debited from the CENVAT account [shall be equal to the Amount claimed as refund (14)]	

**2.0** *Details of the Bank Account to which the refund amount to be credited* : Refund sanctioned in my favour should be credited in my/ our bank account.

Details furnished below;

- (i) Account Number :
- (ii) Name of the Bank :
- (iii) Branch (with address) :

**3.0 Declaration**

- (i) I/We certify that the aforesaid particulars are correct.
- (ii) I/We certify that we satisfy all the conditions that are contained in rule 5 of the CENVAT Credit Rules, 2004 and in Notification No. ....../2012-C.E. (N.T.), dated \_\_\_ June, 2012.
- (iii) I/We am/are the rightful claimant(s) of the refund of CENVAT Credit in terms of rule 5, the same may be allowed in our favour.
- (iv) I/We declare that no separate claim for drawback or refund has been or will be made under the Customs and Central Excise Duties Service Tax Drawback Rules, 1995 or for claim of rebate under Central Excise Rules, 2002 or the Export of Services Rules, 2005 or under Section 93 or 93A of Finance Act, 1994( 32 of 1994).
- (v) I/We declare that we have not filed or will not file any other claim for refund under rule 5 of CENVAT Credit Rules, 2004, for the same quarter to which this claim relates.

Date d d m m y y y y *Signature of the Claimant* .....

*Name of the Claimant* .....

*Registration Number* .....

*Address of the Claimant* .....

**4.0 Enclosures :**

- (i) Copies of Customs Certified ARE-1 form along with the copies of shipping bill and bill of lading in case of the export of goods.
- (ii) Copies of the Bank Realization Certificates for the export of services. [refer 3(d)]
- (iii) Certificate in Annexure A-I from the Auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services. [refer 3(e)]

**5.0 Refund Order No.**

Date 

d	d	m	m	y	y	y	y
---	---	---	---	---	---	---	---

The refund claim filed by Shri/Messrs \_\_\_\_\_ has been scrutinized with the relevant Central Excise/ Service Tax records. The said refund claim has been examined with respect to relevant enclosures

and has/has not been found in order. A refund of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) is sanctioned/The refund claim filed is rejected.

Assistant Commissioner or Deputy Commissioner of Central Excise Forwarded to-

- (i) The Chief Accounts officer, Central Excise, for information and necessary action.
- (ii) The Commissioner of Central Excise.

Assistant Commissioner or Deputy Commissioner of Central Excise

- (i) Passed for payment of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) The amount is adjustable under head "0038 - Union Excise Duties - Deduct Refunds/0044 - Service tax - Deduct Refunds".
- (ii) Amount credited to the account of the claimant as per the details below :

Amount refunded	
Account Number	
Reference No. of transfer	
Name of the Bank	
Address of the Branch	

Date 

d	d	m	m	y	y	y	y
---	---	---	---	---	---	---	---

 Chief Accounts officer

*Annexure A-I*

It is certified that :

- (a) I am qualified auditor to audit the books of account of M/s. \_\_\_\_\_
- (b) I have audited the books of account of M/s. \_\_\_\_\_ for the quarter ending \_\_\_\_\_
- (c) The value of the export turnover of services and total turnover of services mentioned at S. No. 2 and 7 in the table in Form A
  - (i) Is correct as per the books of account and relevant records of M/s \_\_\_\_\_
  - (ii) Is in accordance with the provisions of rule 5 of the CENVAT Credit Rules, 2004.

Date 

d	d	m	m	y	y	y	y
---	---	---	---	---	---	---	---

 Auditor

## 43/2012 - EXEMPTION TO RAILWAYS

### Notification No. 43/2012-Service Tax

G.S.R. (E).- 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), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services of the description mentioned in the Table below, provided by the Indian Railways from the whole of service tax leviable thereon under section 66B of the said Act, with effect from the date of publication of this notification in the Official Gazette, upto and including the **30<sup>th</sup> day of September, 2012.**

TABLE

Sl. No.	Description of taxable services
1.	Service of transportation of passengers, with or without accompanied belongings, by railways in -- (A) first class; or (B) an air conditioned coach
2.	Services by way of transportation of goods by railways

[F. No. 334/1/2012-TRU]

(Vikas)

Under Secretary to the Government of  
India

**45/2012 - REVERSE CHARGE MECHANISM FOR DIRECTORS AND SECURITY SERVICES**

**Notification No. 45/2012 - Service Tax**

New Delhi, the 7<sup>th</sup> August, 2012

G.S.R. (E).- In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.30/2012-Service Tax, dated the 20<sup>th</sup> June,2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 472 (E), dated the 20<sup>th</sup> June, 2012, namely:-

In the said notification,-

(a) in para I, in clause (A),-

(i) after the sub-clause (iv), the following sub-clause shall be inserted, namely :-

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

(ii) in sub-clause (v), after the words “manpower for any purpose”, the words “ or security services” shall be inserted.

(b) in para II, in the Table,-

(i) after Sl.No. 5, the following S.No. and entries shall be inserted, namely:-

“5A	in respect of services provided or agreed to be provided by a director of a company to the said company	Nil	100%”
-----	---------------------------------------------------------------------------------------------------------	-----	-------

(ii) in Sl.No. 8, in the entries under the heading ‘Description of a service’, after the words “manpower for any purpose”, the words “or security services” shall be inserted.

[F.No. 334 /1/ 2012-TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

*Note.- The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 30/2012 - Service Tax, dated 20<sup>th</sup> June, 2012, vide number G.S.R. 472 (E), dated the 20<sup>th</sup> June, 2012 and the same has not been amended so far.*



**46/2012 - STR AMENDED FOR REVERSE CHARGE MECHANISM FOR DIRECTORS  
AND SECURITY SERVICES**

**Notification No. 46/2012 - Service Tax**

New Delhi, the 7<sup>th</sup> August, 2012

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

1. (1) These rules may be called the Service Tax (Third Amendment) Rules, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Service Tax Rules, 1994, in rule 2, in sub-rule (1),-

(A) in clause (d), in sub-clause (i),-

(i) after the item (E), the following item shall be inserted, namely;-

“(EE) in relation to service provided or agreed to be provided by a director of a company to the said company, the recipient of such service;”;

(ii) in the item (F), in the sub-item (b), after the words “manpower for any purpose”, the words “ or security services” shall be inserted.

(B) after clause (f), the following clause shall be inserted, namely:—

“(fa) “security services” means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity;”

[F.No. 334 /01/2012- TRU]

(Raj Kumar Digvijay)

Under Secretary to the Government of India

*Note.- The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-ST, dated the 28<sup>th</sup> June, 1994 vide number G.S.R. 546(E), dated the 28<sup>th</sup> June, 1994 and was last amended by notification No. 36/2012-Service Tax, dated the 20<sup>th</sup> June, 2012 vide number G.S.R. 478 (E), dated the 20<sup>th</sup> June, 2012.*

## **47/2012 – Return due date**

### **NOTIFICATION No 47/2012-SERVICE TAX**

New Delhi, the 28th September, 2012  
6 Asvina, 1934 Saka

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

1. (1) These rules may be called the Service Tax(Fourth Amendment) Rules, 2012.  
(2) They shall come into force on the date of their publication in the Official Gazette.
  
2. In the Service Tax Rules,1994, in rule 7, in sub-rule(2), the following proviso shall be inserted, namely:-

“Provided that the Form ‘ST-3’ required to be submitted by the 25<sup>th</sup> day of October, 2012 shall cover the period between 1<sup>st</sup> April to 30<sup>th</sup> June, 2012 only.”

F.No 341/21/2012-TRU  
(Rajkumar Digvijay)  
Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(i) vide notification No. 2/94-ST, dated 28<sup>th</sup> June, 1994 vide number G.S.R 546(E), dated the 28<sup>th</sup> June, 1994 and were last amended by notification No 46/2012- Service Tax, dated the 7<sup>th</sup> August 2012 , vide GSR 622 (E) dated the 7<sup>th</sup> August 2012.

## 48/2012 - Amends ST-1 and Accounting codes re-notified

### Not. No. 48/2012-ST

Service Tax Rules, 1994 — Fifth Amendment of 2012 — Description of Taxable Services and Accounting Codes re-notified

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

1. (1) These rules may be called the Service Tax (Fifth Amendment) Rules, 2012.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Service Tax Rules, 1994, in Form ST-1,-

(a) in serial no. 7, for the table, the following table shall be substituted, namely :-

S. No.	Description of taxable service (Choose from ANNEXURE)
(1)	(2)

(b) after the ACKNOWLEDGEMENT, the following Annexure shall be inserted, namely :-

#### "ANNEXURE

#### Descriptions of Taxable Services and Accounting Codes for payment of Service Tax

Sl. No.	Finance Act, 1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes			
			Tax Collection	Other Receipts (interest)	Penalties	Deduct Refunds (for use by the field formations)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	(a)	Stockbroker service	00440008	00440009	00441298	00440121
*	(b)	Telegraph authority telephone connection - [(b) was omitted w.e.f. 1-6-2007 and clubbed under (zzzx)]	00440003	00440119	00441296	00440122
*	(c)	Telegraph authority - pager [(c) was omitted w.e.f. 1-6-2007 and clubbed under	00440015	00440020	00441301	00440021

		(zzzx)]				
2	(d)	General insurance service	00440005	00440006	00441297	00440120
3	(e)	Advertising agency services	00440013	00440016	00441299	00440017
4	(f)	Courier agency service	00440014	00440018	00441300	00440019
5	(g)	Consulting engineer services	00440057	00440058	00441310	00440059
6	(h)	Custom House Agent service	00440026	00440027	00441302	00440028
7	(i)	Steamer agent services	00440029	00440030	00441303	00440031
8	(j)	Clearing and forwarding agent services	00440045	00440046	00441306	00440047
9	(k)	Manpower recruitment/supply agency service	00440060	00440061	00441311	00440062
*	(ka)	Goods Transport Operator [This description is not to be used since omitted and clubbed under (zzp) Transport of goods by road - goods transport agency service - (zzp)]	00440067	00440068	00441313	00440069
10	(l)	Air travel agent services	00440032	00440033	00441304	00440034
11	(m)	Mandap keeper service	00440035	00440036	00441305	00440037
12	(n)	Tour operator services	00440063	00440064	00441312	00440065
13	(o)	Rent-a-cab scheme operator services	00440048	00440049	00441307	00440050
14	(p)	Architect services	00440072	00440073	00441314	00440074
15	(q)	Interior decoration/ Designer services	00440076	00440077	00441315	00440078
16	( r)	Management or business consultant service	00440116	00440117	00441325	00440118

17	(s)	Chartered accountant services	00440092	00440093	00441319	00440094
18	(t)	Cost accountant service	00440096	00440097	00441320	00440098
19	(u)	Company secretary service	00440100	00440101	00441321	00440102
20	(v)	Real estate agent service	00440104	00440105	00441322	00440106
21	(w)	Security/detective agency service	00440108	00440109	00441323	00440110
22	(x)	Credit rating agency service	00440088	00440089	00441318	00440090
23	(y)	Market research agency service	00440112	00440113	00441324	00440114
24	(z)	Underwriter service	00440084	00440085	00441317	00440086
*	(za)	Mechanised slaughterhouse service [omitted vide Finance Act, 2001]	00440080	00440081	00441316	00440082
25	(za)	Scientific & technical consultancy services	00440125	00440126	00441326	00440127
26	(zb)	Photography service	00440129	00440130	00441327	00440131
27	(zc)	Convention service	00440133	00440134	00441328	00440135
*	(zd)	Telegraph authority - leased circuit [omitted w.e.f. 1-6-2007 and clubbed under (zzzx)]	00440137	00440138	00441329	00440139
*	(ze)	Telegraph authority - telegraph service [omitted w.e.f. 1-6-2007 and clubbed under (zzzx)]	00440141	00440142	00441330	00440143
*	(zf)	Telegraph authority - telex service [omitted w.e.f. 1-6-2007 and clubbed under	00440145	00440146	00441331	00440147

		(zzzx)]				
*	(zg)	Telegraph authority - facsimile service [omitted w.e.f. 1-6-2007 and clubbed under (zzzx)]	00440149	00440150	00441332	00440151
28	(zh)	Online information and database access service and/or retrieval service through computer network	00440153	00440154	00441333	00440155
29	(zi)	Video production agency/video tape production service	00440157	00440158	00441334	00440159
30	(zj)	Sound recording studio or agency services	00440161	00440162	00441335	00440163
31	(zk)	Broadcasting service	00440165	00440166	00441336	00440167
32	(zl)	Insurance auxiliary service in relation to general insurance	00440169	00440170	00441338	00440171
33	(zm)	Banking and other Financial services	00440173	00440174	00441339	00440175
34	(zn)	Port service (major ports)	00440177	00440178	00441341	00440179
35	(zo)	Service for repair, reconditioning, restoration, or decoration or any other similar services, of any motor vehicle [(zzj) omitted w.e.f 16-6-05]	00440181	00440182	00441343	00440183
*	(zp)	Body corporate other than banks in relation to banking and other financial services [omitted w.e.f. 10-9-04 and clubbed under (zm)]	-----	-----	-----	-----

36	(zq)	Beauty parlours /beauty treatment	00440209	00440210	00441361	00440211
37	(zr)	Cargo handling service	00440189	00440190	00441348	00440191
38	(zs)	Cable operators	00440217	00440218	00441366	00440219
39	(zt)	Dry cleaning service	00440221	00440222	00441369	00440223
40	(zu)	Event management	00440197	00440198	00441353	00440199
41	(zv)	Fashion design	00440213	00440214	00441363	00440215
42	(zw)	Health club and fitness centre service	00440205	00440206	00441358	00440207
43	(zx)	Life insurance service	00440185	00440186	00441346	00440187
44	(zy)	Insurance auxiliary service concerning life insurance business	00440185	00440186	00441346	00440187
45	(zz)	Rail travel agent's service	00440201	00440202	00441356	00440203
46	(zza)	Storage and warehousing services	00440193	00440194	00441350	00440195
47	(zzb)	Business auxiliary service	00440225	00440226	00441371	00440227
48	(zzc)	Commercial training or coaching	00440229	00440230	00441374	00440231
49	(zzd)	Erection, commissioning and installation	00440233	00440234	00441376	00440235
50	(zze)	Franchise service <sup>435</sup>	00440237	00440238	00441384	00440239
51	(zzf)	Internet café	00440241	00440242	00441386	00440243
52	(zzg)	Maintenance or repair service	00440245	00440246	00441388	00440247
53	(zzh)	Technical testing and analysis service	00440249	00440250	00441389	00440251
54	(zzi)	Technical	00440249	00440250	00441389	00440251

<sup>435</sup> Franchise services are liable to service tax and demand of VAT on the same transaction by state government as 'right to use Trade Mark' rejected – Malabar Gold Pvt Ltd 2013-TIOL-512-HC-Kerala-ST

		inspection and certification agency service				
*	(zzj)	Authorised service station [omitted w.e.f 16-6-05 and clubbed under (zo)]	-----	-----	-----	-----
55	(zzk)	Foreign exchange broker service	00440173	00440174	00441339	00440175
56	(zzl)	Other port (minor port) service	00440177	00440178	00441341	00440179
57	(zzm)	Airport services by airport authority	00440258	00440259	00441391	00440260
58	(zzn)	Transport of goods by air	00440266	00440267	00441393	00440268
59	(zzo)	Business exhibition service	00440254	00440255	00441390	00440256
60	(zzp)	Transport of goods by road/goods transport agency service	00440262	00440263	00441392	00440264
61	(zzq)	Construction services other than residential complex, including commercial/ industrial buildings or civil structures	00440290	00440291	00441399	00440292
62	(zzr)	Services by holder of intellectual property right providing intellectual property services other than copyright	00440278	00440279	00441396	00440280
63	(zzs)	Opinion poll agency service	00440274	00440275	00441395	00440276
64	(zzt)	Outdoor catering	00440051	00440052	00441308	00440053
65	(zzu)	Services by a programme producer	00440286	00440287	00441398	00440288
66	(zzv)	Survey and exploration of mineral	00440270	00440271	00441394	00440272
67	(zzw)	Pandal or	00440054	00440055	00441309	00440056



		shamiana service				
68	(zxx)	Travel agent for booking of passage (other than air/rail travel agents)	00440294	00440295	00441400	00440296
69	(zzy)	Services provided by recognised/registered associations in relation to forward contracts	00440282	00440283	00441397	00440284
70	(zzz)	Transport of goods through pipeline or other conduit	00440302	00440303	00441430	00440304
71	(zzza)	Site formation and clearance, excavation, earth moving and demolition services	00440306	00440307	00441431	00440308
72	(zzzb)	Dredging of rivers, ports harbours, backwaters, estuaries, etc.	00440310	00440311	00441432	00440312
73	(zzzc)	Survey and map making service	00440314	00440315	00441433	00440316
74	(zzzd)	Cleaning services	00440318	00440319	00441434	00440320
75	(zzze)	Club or association service	00440322	00440323	00441435	00440324
76	(zzzf)	Packaging service	00440326	00440327	00441436	00440328
77	(zzzg)	Mailing list compilation and mailing service	00440330	00440331	00441437	00440332
78	(zzzh)	Construction of residential complex service	00440334	00440335	00441438	00440336
79	(zzzi)	Service provided by a registrar to an issue	00440338	00440339	00441439	00440340
80	(zzzj)	Service provided by a share transfer agent	00440342	00440343	00441440	00440344
81	(zzzk)	Automated Teller Machine operations, maintenance or	00440346	00440347	00441441	00440348

		management service				
82	(zzzl)	Service provided by a recovery agent	00440350	00440351	00441442	00440352
83	(zzzm)	Selling of space or time slots for advertisements	00440354	00440355	00441443	00440356
84	(zzzn)	Sponsorship service provided to body-corporate or firm including sports sponsorships	00440358	00440359	00441444	00440360
85	(zzzo)	Transport of passengers embarking on domestic/international journey by air	00440362	00440363	00441445	00440364
86	(zzzp)	Transport of goods by rail including transport of goods in containers by rail (for the present, transport of passengers by rail in air-conditioned class/first class also may be paid under this description/ accounting code)	00440390	00440391	00441446	00440392
87	(zzzq)	Business support service	00440366	00440367	00441447	00440368
88	(zzzr)	Auction service	00440370	00440371	00441448	00440372
89	(zzzs)	Public relation management service	00440374	00440375	00441449	00440376
90	(zzzt)	Ship management service	00440378	00440379	00441450	00440380
91	(zzzu)	Internet telecommunication services (includes internet telephony Service which became taxable from 1-5-2006)	00440382	00440383	00441451	00440384

92	(zzzv)	Transport of persons by cruise ship	00440386	00440387	00441452	00440388
93	(zzzw)	Credit card, debit card, charge card or other payment card related services	00440394	00440395	00441453	00440396
94	(zzzx)	Services of telegraph authority in relation to telecommunication service	00440398	00440399	00441454	00440400
95	(zzzy)	Mining of mineral, oil or gas service	00440402	00440403	00441455	00440404
96	(zzzz)	Renting of immovable property services	00440406	00440407	00441456	00440408
97	(zzzza)	Works contract service	00440410	00440411	00441457	00440412
98	(zzzzb)	Development and supply of content for use in telecom services, advertising agency, etc.	00440414	00440415	00441458	00440416
99	(zzzzc)	Asset management including portfolio management and fund management	00440418	00440419	00441459	00440420
100	(zzzzd)	Design service other than interior decoration and fashion designing	00440422	00440423	00441460	00440424
101	(zzzze)	Information technology software service	00440452	00440450	00441461	00440451
102	(zzzzf)	Services provided by an insurer of life insurance under Unit Linked Insurance Plan (ULIP)	00440430	00440431	00441462	00440432
103	(zzzzg)	Services provided by a recognized	00440434	00440435	00441463	00440436

		stock exchange in relation to transaction in securities				
104	(zzzzh)	Services provided by recognised/registered associations in relation to clearance or settlement of transactions in goods or forward contracts	00440438	00440439	00441464	00440440
105	(zzzzi)	Services provided by a processing and clearinghouse in relation to securities, goods and forward contracts	00440442	00440443	00441465	00440446
106	(zzzzj)	Services provided by any person in relation to supply of tangible goods	00440445	00440447	00441466	00440448
107	(zzzzk)	Cosmetic and plastic surgery service	00440460	00440463	00441467	00440466
108	(zzzzl)	Transport of goods by coastal shipping (services by way of transportation of goods by inland waterways is placed in the negative list)	00440470	00440473	00441468	00440476
109	(zzzzm)	Legal consultancy service	00440480	00440483	00441469	00440486
110	(zzzzn)	Promotion, marketing, organizing or assisting in organizing games of chance including lottery, etc.	00440595	00440596	00441470	00440597
111	(zzzzo)	Health services by a clinical	00440598	00440599	00441471	00440600

		establishment, health check-up/diagnosis, etc.				
112	(zzzzp)	Maintenance of medical records	00440601	00440602	00441472	00440603
113	(zzzzq)	Service of promotion or marketing of brand of goods/services/events	00440604	00440605	00441473	00440606
114	(zzzzr)	Service of permitting commercial use or exploitation of events	00440607	00440608	00441474	00440609
115	(zzzzs)	Electricity exchange service	00440610	00440611	00441475	00440612
116	(zzzzt)	Copyright service - transfer temporarily/permit use or enjoyment	00440613	00440614	00441476	00440615
117	(zzzzu)	Special services provided by builders	00440616	00440617	00441477	00440618
118	(zzzzv)	Restaurant service	00441067	00441068	00441478	00441069
119	(zzzzw)	Service of providing accommodation in hotels, inn, guest house, club or campsite whatever name called.	00441070	00441071	00441479	00441072
120		Other taxable services [services other than the 119 listed above]	00441480	00441481	00441485	00441482

### Education Cess

Sl. No.	Description	Tax collection	Other receipts (interest)	Penalties	Deduct refunds
1	Primary Education Cess	00440298	00440299	00441486	00440300
2	Secondary and Higher Education Cess	00440426	00440427	00441487	00440428

**49/2012 - Exemption to Janashri and Aam Aadmi Bima Yojana**

**Notification No.49 /2012 - Service Tax**

New Delhi, the 24<sup>th</sup> December, 2012

G.S.R....(E)- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2012-Service Tax, dated the 20<sup>th</sup> June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), number G.S.R. 467 (E), dated the 20<sup>th</sup> June, 2012, namely:-

In the said notification, after entry 26, the following shall be inserted namely:-

“26A. Services of life insurance business provided under following schemes -

- (a) Janashree Bima Yojana (JBY); or
- (b) Aam Aadmi Bima Yojana (AABY);”.

[F.No. 354 /190/ 2012-TRU]

(Rajkumar Digvijay)

Under Secretary to the Government of India

**1/2013 - Amendment in Service Tax Rules, 1994**

**Notification No.01/2013-Service Tax**

New Delhi, the 22nd February, 2013  
3 Phalgun, 1934 Saka

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

1.(1) These rules may be called the Service Tax ( Amendment) Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Service Tax Rules, 1994, -

(a) in rule 7, in sub-rule (2), after the proviso, the following proviso shall be inserted, namely:-

“ Provided further that the Form ST- 3 for the period between the 1<sup>st</sup> day of July 2012 to the 30<sup>th</sup> day of September 2012, shall be submitted by the 25<sup>th</sup> day of March, 2013”;

(b) for Form ST-3, the following Form shall be substituted, namely:-

“FORM ST-3”

(Return under section 70 of the Finance Act, 1994 read with rule 7 of Service Tax Rules, 1994)

(Please see the instructions carefully before filling the Form)

**PART-A GENERAL INFORMATION**

A1

ORIGINAL		REVISED	
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(Please tick whichever is applicable)

A2 STC Number:

A3 Name of the assessee:

A4

Financial Year					-				
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A5 Return for the period (Please tick the appropriate period)

April – September		October - March	
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A6

A6.1	Has the assessee opted to operate as “Large Taxpayer” Unit [‘Y’/‘N’] (As defined under Rule 2(ea) of the Central Excise Rules, 2002 read with Rule 2 (1) (cc) of the Service Tax Rules, 1994)	Yes/No
A6.2	If reply to column A6.1 is Yes, name of Large Taxpayer Unit opted for (choose from List)	Dropdown List of LTUs

A7 Premises Code Number:

A8 Constitution of the assessee (Please tick the appropriate category)

A8.1 Individual/Proprietary		A8.2 Limited liability Partnership	
A8.3 Registered Public Ltd. Company		A8.4 Registered Private Ltd. Company	
A8.5 Registered Trust		A8.6 Society/Co-operative Society	

A 8.7 A firm		A8.8 Hindu Undivided Family	
A 8.9 Government		A8.10 An association of persons or body of individuals, whether incorporated or not	
A.8.11 A local authority		A8.12 Every artificial juridical person, not falling within any of the preceding categories	

A9 Taxable Service(s) for which tax is being paid

A10 Assessee is liable to pay service tax on this taxable service as –  
(Please tick the appropriate category)

A10.1 A Service Provider under Section 68(1)		A10.2 A Service Receiver under Section 68(2)	
A 10.3 A Service Provider under partial reverse charge under proviso to Section 68(2)		A10.4 A Service Receiver under partial reverse charge under proviso to Section 68(2)	
A 10.5 If covered by A10.3 above, then the percentage of service tax Payable as provider of service		A10.6 If covered by A10.4 above, then the percentage of service tax Payable as recipient of service	

A11 EXEMPTIONS

A11.1 Has the assessee availed benefit of any exemption notification ('Y'/'N')	
A11.2 If reply to A11.1 is 'Y', please furnish Notification Nos. and Sl. No. in the notification under which such exemption is availed	.

A12 ABATEMENTS

A12.1 Has any abatement from the value of services been claimed ('Y'/'N')	
A12.2 If reply to A12.1 is 'Y', please furnish Notification Nos. and Sl. No. in the notification under which such abatement is availed:	.

A13 PROVISIONAL ASSESSMENT

A13.1 Whether provisionally assessed ('Y'/'N')	
A13.2 If reply to A13.1 is 'Y', please furnish Provisional Assessment Order No. & Date	

PART-B VALUE OF TAXABLE SERVICE AND SERVICE TAX PAYABLE

(TO BE DISPLAYED SERVICE-WISE)

B1 FOR SERVICE PROVIDER

	Month / Quarter	Apr/Oct	May/Nov	Jun/Dec	July/Jan	Aug/Feb	Sep/Mar
B1.1	Gross amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/invoices/challans or any other document may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service provided or to be provided (including export of service and exempted service)						
B1.2	Amount received in advance for services for which bills/invoices/challans or any other documents have not been issued						



B1.3	Amount taxable on receipt basis under third proviso to rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued						
B1.4	Amount taxable for services provided for which bills/invoices/challans or any other documents have not been issued						
B1.5	Money equivalent of other considerations charged, if any, in a form other than money						
B1.6	Amount on which service tax is payable under partial reverse charge						
B1.7	Gross Taxable Amount B1.7 = B1.1+B1.2+B1.3+B1.4+B1.5+B1.6						
B1.8	Amount charged against export of service provided or to be provided						
B1.9	Amount charged for exempted service provided or to be provided (other than export of service given at B1.8 above)						
B1.10	Amount charged as pure agent						
B1.11	Amount claimed as abatement						
B1.12	Any other amount claimed as deduction, please specify.						
B1.13	Total Amount claimed as Deduction B1.13=B1.8+B1.9+B1.10+B1.11+B1.12						
B1.14	NET TAXABLE VALUE B1.14=B1.7 - B1.13						
B1.15	Service tax rate wise break up of NET TAXABLE VALUE (B1.14): Ad-valorem rate						
B1.16	Specific rate (applicable as per rule 6 of STR)						
B1.17	Service tax payable						
B1.18	Less R&D cess payable						
B1.19	Net Service Tax payable (B1.19=B1.17-B1.18)						
B1.20	Education Cess payable						
B1.21	Secondary & Higher Education						

1	Cess payable						
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B2 – FOR SERVICE RECEIVER

	Month / Quarter	Apr/Oct	May/Nov	Jun/Dec	July/Jan	Aug/Feb	Sep/Mar
B2.1	Gross amount (excluding amounts paid in advance, amounts taxable on payment basis, for which bills/invoices/challans or any other document may not have been issued) for which bills/invoices/challans or any other documents are issued relating to service received or to be received						
B2.2	Amount paid in advance for services for which bills/invoices/challans or any other documents have not been issued						
B2.3	Amount taxable on receipt basis under third proviso to rule 6(1) of Service Tax Rules, 1994 for which bills/invoices/challans or any other documents have not been issued						
B2.4	Money equivalent of other considerations paid, if any, in a form other than money						
B2.5	Amount paid for services received from Non-Taxable territory - Imports						
B2.6	Amount paid for services received from Non-Taxable territory – Other than Imports						
B2.7	Amount on which service tax is payable under partial reverse charge						
B2.8	Gross Taxable Amount B2.8= B2.1+B2.2+B2.3+B2.4+ B2.5+B2.6+B2.7						
B2.9	Amount paid for exempted services received or to be received						
B2.10	Amount paid as pure agent						
B2.11	Amount claimed as abatement						
B2.12	Any other amount claimed as deduction, please specify						
B2.13	Total Amount claimed as Deduction B2.13 = B2.9+B2.10+B2.11+B2.12						

B2.14	NET TAXABLE VALUE B2.14 = B2.8-B2.13						
B2.15	Service tax rate wise break up of NET TAXABLE VALUE (B2.14): Ad-valorem rate						
B2.16	Specific rate (applicable as per rule 6 of STR)						
B2.17	Service tax payable						
B2.18	Less R&D cess payable						
B2.19	Net Service Tax payable (B2.19=B2.17-B2.18)						
B2.20	Education Cess payable						
B2.21	Secondary & Higher Education Cess payable						

**PART-C SERVICE TAX PAID IN ADVANCE**

Amount of Service Tax paid in advance under sub-rule (1A) of Rule 6 of ST Rules:

	Month / Quarter	Apr/Oct	May/Nov	Jun/Dec	July/Jan	Aug/Feb	Sep/Mar
C1	Amount of service tax deposited in advance						
C2	Amount of Education Cess deposited in advance						
C3	Amount of Secondary & Higher Education Cess deposited in advance						
C4	Challan Nos., date & amount	(i) No.					
		Date					
		Amount					

**PART-D SERVICE TAX PAID IN CASH AND THROUGH CENVAT CREDIT**

Service Tax, Education Cess, Secondary & Higher Education Cess and other amounts paid (To be filled by a person liable to pay service tax and not to be filled by an Input Service Distributor):

	Month / Quarter	Apr/Oct	May/Nov	Jun/Dec	July/Jan	Aug/Feb	Sep/Mar
D1	In cash						
D2	By CENVAT credit (not applicable where the service tax is liable to be paid by the Recipient of Service)						
D3	By adjustment of amount paid as service tax in advance under Rule 6(1A) of the ST Rules						
D4	By adjustment of excess amount paid earlier as service tax and adjusted, by taking credit of such excess service tax paid, in this period under Rule 6(3) of the ST Rules						
D5	By adjustment of excess amount paid earlier as service tax and adjusted in this period under Rule 6(4A) of the ST Rules						
D6	By adjustment of excess amount paid earlier as service tax in respect of service of Renting of Immovable Property, on account of non-availment of deduction of property tax paid and adjusted in this period under Rule 6(4C) of the ST Rules						
D7	By book adjustment in the case of specified						

	Government departments						
D8	Total Tax paid D8 = D1+D2+D3+D4+D5+D6+D7						

**PART-EEDUCATION CESS PAID IN CASH AND THROUGH CENVAT CREDIT**

E1	In cash						
E2	By CENVAT credit (not applicable where the service tax is liable to be paid by the recipient of service)						
E3	By adjustment of amount paid as service tax in advance under Rule 6(1A) of the ST Rules						
E4	By adjustment of excess amount paid earlier as service tax and adjusted, by taking credit of such excess service tax paid, in this period under Rule 6(3) of the ST Rules						
E5	By adjustment of excess amount paid earlier as service tax and adjusted in this period under Rule 6(4A) of the ST Rules						
E6	By adjustment of excess amount paid earlier as service tax in respect of service of Renting of Immovable Property, on account of non-availability of deduction of property tax paid and adjusted in this period under Rule 6(4C) of the ST Rules						
E7	By book adjustment in the case of specified Government departments						
E8	Total Education Cess paid E8=E1+E2+E3+E4+E5+E6+E7						

**PART-FSECONDARY& HIGHER EDUCATION CESS PAID IN CASH AND THROUGH CENVAT CREDIT**

F1	In cash						
F2	By CENVAT credit (not applicable where the service tax is liable to be paid by the recipient of service)						
F3	By adjustment of amount paid as service tax in advance under Rule 6(1A) of the ST Rules						
F4	By adjustment of excess amount paid earlier as service tax and adjusted, by taking credit of such excess service tax paid, in this period under Rule 6(3) of the ST Rules						
F5	By adjustment of excess amount paid earlier as service tax and adjusted in this period under Rule 6(4A) of the ST Rules						
F6	By adjustment of excess amount paid earlier as service tax in respect of service of Renting of Immovable Property, on account of non-availability of deduction of property tax paid and adjusted in this period under Rule 6(4C) of the ST Rules						
F7	By book adjustment in the case of specified Government departments						
F8	Total Tax paid F8=F1+F2+F3+F4+F5+F6+F7						

**PART G - ARREARS, INTEREST, PENALTY, ANY OTHER AMOUNT ETC. PAID**

G1	Arrears of revenue (Tax amount) paid in cash						
G2	Arrears of revenue (Tax amount) paid by utilising CENVAT credit						
G3	Arrears of Education Cess paid in cash						
G4	Arrears of Education Cess paid by utilising CENVAT credit						
G5	Arrears of Secondary & Higher Education Cess paid in cash						
G6	Arrears of Secondary & Higher Education Cess paid by utilising CENVAT credit						
G7	Amount paid in terms of section 73A of Finance Act, 1994						
G8	Interest paid (in cash only)						
G9	Penalty paid (in cash only)						
G10	Amount of Late fee paid, if any.						
G11	Any other amount paid (please specify)						
G12	Total payment of arrears, interest, penalty and any other amount, etc. made G12=(G1+G2+G3+G4+G5+G6+G7+G8+G9+G10+G11)						

**PART-H**

**H1DETAILS OF CHALLAN** (vide which service tax education cess, secondary and higher education cess and other amounts have been paid in cash)

Challan Nos. with date and amount	(i)	No.						
		Date						
		Amt.						
	(ii)	No.						
		Date						
		Amt.						

**H2**Source documents details for payments made in advance / adjustment, for entries made at columns D3, D4, D5, D6, D7; E3, E4, E5, E6, E7; F3, F4, F5, F6, F7; & G1 to G11

S. No. and description of payment entry in this return	Month/ Quarter	Challan / Document / Credit Entry Reference Number etc.	Challan / Document Date	Amount
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**\*\* (Assessee liable to pay service tax on quarterly basis may furnish details quarter wise i.e. Apr-Jun, Jul-Sep, Oct-Dec, Jan-Mar)**

**PART-I**

**DETAILS OF INPUT STAGE CENVAT CREDIT**

(To be filled by a taxable service provider only and not to be filled by Service Receiver liable to pay service tax or Input Service Distributor):

**I1 DETAILS ABOUT THE ASSESSEE PROVIDING EXEMPTED AND NON-TAXABLE SERVICE OR MANUFACTURING EXEMPTED EXCISABLE GOODS:**

11.1	Whether providing any exempted service or non-taxable service ('Y'/'N')	
11.2	Whether manufacturing any exempted excisable goods ('Y'/'N')	
11.3	If reply to any one of the above is 'Y', whether maintaining separate account for receipt or consumption of input service and input goods [refer to Rule 6 (2) of CENVAT Credit Rules, 2004]('Y'/'N')	
11.4	If reply to any one of the columns 11.1&11.2 above is 'Y'	

	and 11.3 is 'N', which option, from the below mentioned options, is being availed under Rule 6(3) of the CENVAT Credit Rules, 2004	
11.4.1	Whether paying an amount equal to 6% of the value of the exempted goods and exempted services [refer to Rule 6(3)(i) of CENVAT Credit Rules, 2004]('Y'/'N'); or	
11.4.2	Whether paying an amount equivalent to CENVAT Credit attributable to inputs and input services used in or in relation to manufacture of exempted goods or provision of exempted services [refer to Rule 6(3)(ii) of CENVAT Credit Rules, 2004]('Y'/'N');or	
11.4.3	Whether maintaining separate account for receipt or consumption of input goods, taking CENVAT credit only on inputs (used in or in relation to the manufacture of dutiable final products excluding exempted goods and for the provision of output services excluding exempted services) and paying an amount equivalent to CENVAT Credit attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services [refer to Rule 6(3)(iii) of CENVAT Credit Rules, 2004]('Y'/'N')	

**12. AMOUNT PAYABLE UNDER RULE 6(3) OF THE CENVAT CREDIT RULES, 2004:**

Sl. No.	Month/Quarter	Apr/ Oct	May/ Nov	Jun/ Dec	July/ Jan	Aug/ Feb	Sep/ Mar
12.1	Value of exempted goods cleared						
12.2	Value of exempted services provided						
12.3	Amount paid under Rule 6(3) of CENVAT Credit Rules, 2004, by debiting CENVAT Credit account						
12.4	Amount paid under Rule 6(3) of CENVAT Credit Rules, 2004, by cash						
12.5	Total amount paid under Rule 6(3) of CENVAT Credit Rules, 2004 12.5 = 12.3 + 12.4						

**13 CENVAT CREDIT TAKEN AND UTILISED:**

Sl. No.	Month/Quarter	Apr/ Oct	May/ Nov	Jun/ Dec	July/ Jan	Aug/ Feb	Sep/ Mar
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**13.1 DETAILS OF CENVAT CREDIT OF SERVICE TAX AND CENTRAL EXCISE DUTY**

TAKEN AND UTILISATION THEREOF –

13.1.1	Opening Balance						
13.1.2	Credit taken						
13.1.2.1	on inputs						
13.1.2.2	on capital goods						
13.1.2.3	on input services received directly						
13.1.2.4	as received from Input Service Distributor						
13.1.2.5	from inter-unit transfer by a LTU						
13.1.2.6	Any other credit taken (please specify)						
13.1.2.7	TOTAL CREDIT TAKEN =						

	I3.1.2.7= (I3.1.2.1+I3.1.2.2+I3.1.2.3+I3.1.2.4+ I3.1.2.5+I3.1.2.6)							
I3.1.3	Credit Utilised							
I3.1.3.1	for payment of service tax							
I3.1.3.2	for payment of Education Cess on taxable services							
I3.1.3.3	for payment of Secondary and Higher Education Cess on taxable services							
I3.1.3.4	for payment of excise duty or any other duty							
I3.1.3.5	towards clearance of input goods and capital goods removed as such or after use							
I3.1.3.6	towards inter unit transfer to LTU							
I3.1.3.7	for payment of an amount under rule 6(3) of CENVAT Credit Rules, 2004							
I3.1.3.8	for any other payments/adjustments/reversal (Please specify)							
I3.1.3.9	TOTAL CREDIT UTILISED I3.1.3.9=(I3.1.3.1+I3.1.3.2+I3.1.3.3+I3.1.3.4+ I3.1.3.5+I3.1.3.6+I3.1.3.7+I3.1.3.8)							
I3.1.4	Closing Balance of CENVAT credit I3.1.4 = {(I3.1.1 + I3.1.2.7) – I3.1.3.9}							

### I3.2 DETAILS OF CENVAT CREDIT OF EDUCATION CESS TAKEN & UTILISATION THEREOF –

I3.2.1	Opening Balance of Education Cess							
I3.2.2	Credit of Education Cess taken							
I3.2.2.1	on inputs							
I3.2.2.2	on capital goods							
I3.2.2.3	on input services received directly							
I3.2.2.4	as received from Input Service Distributor							
I3.2.2.5	from inter unit transfer by a LTU							
I3.2.2.6	Any other credit taken (please specify)							
I3.2.2.7	Total credit of Education Cess taken I3.2.2.7= (I3.2.2.1+I3.2.2.2+I3.2.2.3+I3.2.2.4+ I3.2.2.5+I3.2.2.6)							
I3.2.3	Credit of Education Cess utilised							
I3.2.3.1	for payment of Education Cess on goods & services							
I3.2.3.2	towards payment of Education Cess on clearance of input goods and capital goods removed as such or after use							
I3.2.3.3	towards inter unit transfer to LTU							
I3.2.3.4	for any other payments/adjustments/reversal (please specify)							
I3.2.3.5	Total credit of Education Cess utilised I3.2.3.5= (I3.2.3.1+I3.2.3.2+I3.2.3.3+I3.2.3.4)							
I3.2.4	Closing Balance of Education Cess I3.2.4={(I3.2.1+I3.2.2.7)-I3.2.3.5}							

**13.3 DETAILS OF CENVAT CREDIT OF SECONDARY AND HIGHER EDUCATION CESS  
TAKEN & UTILISATION THEREOF –**

13.3.1	Opening Balance of SHEC								
13.3.2	Credit of SHEC taken								
13.3.2.1	on inputs								
13.3.2.2	on capital goods								
13.3.2.3	on input services received directly								
13.3.2.4	as received from Input Service Distributor								
13.3.2.5	from inter unit transfer by a LTU								
13.3.2.6	Any other credit taken (please specify)								
13.3.2.7	Total credit of SHEC taken 13.3.2.7= (13.3.2.1+13.3.2.2+13.3.2.3+13.3.2.4+13.3.2.5+13.3.2.6)								
13.3.3	Credit of SHEC utilised								
13.3.3.1	for payment of SHEC on goods & services								
13.3.3.2	towards payment of SHEC on clearance of input goods and capital goods removed as such or after use								
13.3.3.3	towards inter unit transfer to LTU								
13.3.3.4	for any other payments/adjustments/reversal (please specify)								
13.3.3.5	Total credit of SHEC utilised 13.3.3.5= (13.3.3.1+13.3.3.2+13.3.3.3+13.3.3.4)								
13.3.4	Closing Balance of SHEC 13.3.4 = {(13.3.1+13.3.2.7)- 13.3.3.5}								

**PART J**

**CREDIT DETAILS FOR INPUT SERVICE DISTRIBUTOR**

**(TO BE FILLED ONLY BY AN INPUT SERVICE DISTRIBUTOR):**

Sl. No.	Month/Quarter	Apr/ Oct	May/ Nov	June/ Dec	July/ Jan	Aug/ Feb	Sep/ Mar
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**J1 DETAILS OF CENVAT CREDIT OF SERVICE TAX & CENTRAL EXCISE DUTY TAKEN AND DISTRIBUTION THEREOF –**

J1.1	Opening Balance of CENVAT credit						
J1.2	Credit taken (for distribution) on input services						
J1.3	Credit distributed						
J1.4	Credit not eligible for distribution in terms of rule 7(b) of CENVAT Credit Rules, 2004						
J1.5	Closing Balance of CENVAT credit J1.5 = {(J1.1+J1.2) – (J1.3+J1.4)}						

**J2 DETAILS OF CENVAT CREDIT OF EDUCATION CESS TAKEN AND DISTRIBUTION THEREOF –**

J2.1	Opening balance of CENVAT credit of Education Cess						
J2.2	Credit of Education Cess taken (for distribution) on input services						
J2.3	Credit of Education Cess distributed						
J2.4	Credit of Education Cess not eligible for distribution in terms of rule 7(b) of CENVAT Credit Rules, 2004						



J2.5	Closing Balance of CENVAT credit of EC= J2.5= {(J2.1+J2.2) – (J2.3+J2.4)}													
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**J3 DETAILS OF CENVAT CREDIT OF SECONDARY AND HIGHER EDUCATION CESS TAKEN AND DISTRIBUTION THEREOF –**

J3.1	Opening balance of CENVAT credit of SHEC													
J3.2	Credit of SHEC taken (for distribution) on input services													
J3.3	Credit of SHEC distributed													
J3.4	Credit of SHEC not eligible for distribution in terms of rule 7(b) of CENVAT Credit Rules, 2004													
J3.5	Closing Balance of CENVAT credit of SHEC = J3.5 = {(J3.1+J3.2) – (J3.3+J3.4)}													

**PART K**

**SELF ASSESSMENT MEMORANDUM:**

- (a) I/We declare that the above particulars are in accordance with the records and books maintained by me/us and are correctly stated.
- (b) I/We have assessed and paid the service tax and/or availed and distributed CENVAT credit correctly as per the provisions of the Finance Act, 1994 and the rules made thereunder.
- (c) I/We have paid duty within the specified time limit and in case of delay, I/We have deposited the interest leviable thereon.
- (d) I have been authorised as the person to file the return on behalf of the person providing the taxable service/recipient of service, as the case may be.

Place:

Date:

(Name and Signature of Assessee or Authorised Signatory)

**PART L**

If the return has been prepared by a Service Tax Return Preparer or Certified Facilitation Centre (hereinafter referred to as 'STRP'/CFC'), furnish further details as below:

(a)	Identification No. of STRP/CFC																		
(b)	Name of STRP/CFC																		

(Signature of STRP/CFC)

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**INSTRUCTIONS TO FILL UP FORM ST-3:**

**A. General Instructions**

- (i) If there is a change in the address or any other information as provided by the assessee in Form ST-1 or as contained in Form ST-2 (Certificate of Registration issued by the Department), the assessee should file amendment to ST1 application online in ACES for getting the Amended ST2 issued by the departmental officer. If the assessee has provided / received any additional service for which he is not registered, he has to first file the amendment to ST1 application and after the approval of the same by the departmental officer, he should file the return.
- (ii) Please indicate 'NA' against entries which are not applicable.
- (iii) Please indicate 'Nil' where the information to be furnished is nil.
- (iv) Please fill 'Y' for Yes, or 'N' for No wherever it is written as ('Y'/N') in the FORM.

**B. Instructions to fill up FORM ST-3**

Column No. in Form ST-3	Instructions
A2	STC No. is 15 digit PAN based service tax code number issued to assessee in the FORM ST-2 (Certificate of Registration issued by the Department).
A3	Name of the assessee should be filled as mentioned in FORM ST-2 (Certificate of Registration issued by the Department).
A5	The relevant period for which return is being filed is to be selected.
A9 & A10	Though with effect from 1 <sup>st</sup> July 2012, classification of services has been dispensed with, the assessee is required to mention the names of taxable service(s) as per ANNEXURE enclosed with this return.
A11.1 & A11.2	If assessee has availed benefit of any exemption notification, the notification number and Serial number (in the notification), if any, against which such exemption has been availed, has to be entered
A12.1 & A12.2	If assessee has availed abatement from the value of services, he has to furnish the notification number and Serial number (in the notification), if any, against which such abatement has been availed.
B	<p>(i) An assessee liable to pay service tax on quarterly basis may furnish details quarter-wise i.e. Apr-Jun, Jul-Sep, Oct-Dec &amp; Jan-Mar;</p> <p>(ii) The recipient of service liable to pay service tax should indicate the amount paid by him to service provider.</p>
B1.1	<p>Gross amount for which bills/invoices/challans are issued against taxable service provided or agreed to be provided or received/agreed to be received (in case of service receiver), which are taxable on accrual basis, as per the Point of Taxation Rules is to be mentioned in this column</p> <p>(A) it includes,-</p> <p>(a) amount charged towards exported service, (b) amount charged towards exempted service (other than export of service), (c) amount charged as a pure agent, and (d) amount includible in terms of Rules 5(1) &amp; 6(1) of the Service Tax (Determination of Value) Rules, 2006</p> <p>(B) it excludes</p> <p>(a) amount received in advance i.e. before provision of services for which bills or invoices or challans or any other documents may not have been issued, because it has to be shown in column B1.2;</p> <p>(b) amount taxable on receipt basis, which is applicable to individuals and partnership firms whose aggregate value of taxable services during previous financial year was less than or equal to rupees fifty lakh and he opts to pay tax at the time when payment is received by him in respect of taxable value of rupees fifty lakh in the financial year to which return relates as per third proviso to Rule 6(1) of Service Tax Rules, 1994, for which bills or invoices or challans or any other documents may not have been issued, because it has to be shown in column B1.3;</p> <p>(c) Amount taxable for the services provided for which bills or invoices or challans or any other documents may not have been issued, (this amount has to be entered in column B1.4.)</p> <p>(d) Service tax;</p>

	(e) Education cess; and  (f) Secondary and higher education cess
B1.2	Gross amount received (or paid in case of service receiver) in advance is the total amount received (or paid in case of service receiver) for the particular taxable service before provision of service (including any amount received for continuous service), and (A) it includes,- (a) amount received towards exported service, (b) amount received towards exempted service (other than export of service), (c) amount received as pure agent, and (d) amount received which is liable to be included in the value in terms of Rules 5(1) & 6(1) of the Service Tax (Determination of Value) Rules, 2006 (e) Amount paid for services received from Non-Taxable territory – Imports or other than Imports under column Nos. B2.5 and B2.6. (B) it excludes (a) Service tax, (b) Education cess, and (c) Secondary and higher education cess
B1.3	This is applicable to individuals and partnership firms whose aggregate value of taxable services during previous financial year is less than or equal to rupees fifty lakh and he opts to pay tax at the time when payment is received by him in respect of taxable value of rupees fifty lakh in the financial year to which return relates.
B1.5 & B2.4	(i) The value of consideration charged (or paid in case of service receiver), other than money, is to be estimated in equivalent money value of such consideration in terms of the Service Tax (Determination of Value) Rules, 2006 (ii) 'Consideration' includes any amount that is payable for the taxable services provided or to be provided, as defined in Explanation to Section 67 of the Act.
B1.6, B2.5, B2.6 & B2.7	In case of some services, as notified under Notification No. 30/2012-ST, dated 20 <sup>th</sup> June, 2012 (as amended), the liability to pay service tax has been placed on the recipient of service in terms of sub-section (2) of section 68 of the Finance Act, 1994 read with rule 2(1)(d)(i) of the Service Tax Rules, 1994. In respect of such services, the amount on which service tax is payable has to be shown as calculated in terms of Rule 7 of Point of Taxation Rules, 2011.
B1.8	With effect from 01.07.2012, exports of services are not to be taxed under service tax, as per Place of Provision of Services Rules, 2012. If the assessee has included the amount of export of service in column B1.1, he has to fill up said amount in column B1.7 also for claiming deduction of said amount from the gross amount. However, there may be cases where ST-3 return for the period prior to 01.07.2012 is to be filed by service providers or recipient of service, as the case may be. They are also required to fill up this column for furnishing the amount charged against the export of services made before 01.07.2012.
B1.9	'Exempted Service' refers to the taxable service which is exempt, for the time being, from payment of service tax under a notification, other than by way of abatement.
B1.10	'Pure Agent' has been defined in Explanation 1 to Rule 5 of the Service Tax (Determination of Value) Rules, 2006
B1.11	'Abatement' refers to the part of value of taxable service which is not includible in the taxable value for payment of service tax through notification, such as Notification No. 26/2012-ST, dated 20.06.2012 issued under Section 66B of the Finance Act, 1994.
B1.12	Any deductions, which is not mentioned in any other clause, from gross value of taxable service has to be provided (For example, deduction of property tax paid in respect of the taxable service of renting of an immovable property in terms of Rule 6(4C) of Service Tax Rules, 1994 read with Notification No. 29/2012-ST, dated 20 <sup>th</sup> June, 2012).
B1.15 & B2.15	If an assessee is paying tax at the rate of 12% or other than 12%, then he has to mention the details of taxable value in this column by entering the tax rate applicable to him. This is also applicable to the assesseees who want to file their return pertaining to the period prior to

	01.04.2012 when tax rate was 10%, 8% or 5%, as the case may be. This can be done by inserting additional rows for such entries.
B1.16 & B2.16	As per Rule 6 of the Service Tax Rules, 1994, the service Providers/Recipients in respect of services of 'Booking of tickets for Air Travel provided by Air Travel Agents'; 'Insurer carrying on life insurance business'; 'Purchase or sale of foreign currency including money changing'; and 'Distributors and selling agents or persons assisting in organizing lottery' have been given option to pay service tax at either specific rate or a combination of specific and ad valorem rate. Such assesseees have to mention the details of such taxable value in these columns by selecting the appropriate tax rate(s) as applicable to them.
B1.18 & B2.18	Deduction of R & D cess paid, if applicable, from tax payable can be shown here separately for the relevant services, such as the service of import of technology, applicable.
B2.5 & B2.6	Amount paid for services received from non taxable territory is be entered in this column. This includes value of import of services. Two separate rows have been provided to enter the B2.5 - Amount charged for services received from Non-Taxable territory – Imports and; B2.6 - Amount charged for services received from Non-Taxable territory – Other than Imports
D3, E3 & F3	If any amount has been paid in advance as service tax in terms of rule 6(1A) of Service Tax Rules, 1994 and the assessee has adjusted that amount against his service tax liability, such adjustment has to be shown here.
D4, E4 & F4	Rule 6 (3) of Service Tax Rules, 1994 allows adjustment of service tax amount which was paid earlier in respect of taxable service not provided wholly or partially by the service provider or where the amount of invoice is re-negotiated. Such adjustment is to be shown here. Example: A service provider receives an advance of Rs 1000/- on which he pays a service tax of Rs 120/-. However, later on he does not provide this service and refunds the amount to the person from whom the advance was received. He can, in this case, adjust the amount of Rs 120/- for any of his future liability of service tax.
D5, E5 & F5	Rule 6 (4A) of Service Tax Rules, 1994 allows adjustment of service tax amount paid in preceding months or quarter, which is in excess of the service tax liability for such month or quarter. Such adjustment is to be shown here. Example: A service provider having centralized registration pays an amount of Rs 1000/- as service tax for services provided by him from his five branches. However, on receipt of information from these branches, the service tax liability is computed as Rs 900/-. In this case he has paid an excess amount of Rs 100/- as service tax. He can adjust this excess amount of Rs 100/- against service tax liability for succeeding month/quarter.
D6, E6 & F6	Rule 6 (4C) of Service Tax Rules, 1994 allows adjustment of service tax amount paid in preceding months or quarter, which is in excess of the amount required to be paid towards service tax liability for such month or quarter on account of non-availment of deduction of property tax paid in terms of Notification No. 29/2012-ST, dated 20 <sup>th</sup> June, 2012 from the gross amount of rent charged for the immovable property. Such adjustment is to be shown here.
D7, E7 & F7	Some department of Central Government collect service tax for the services provided/received by them and the payment of said tax to the Union of India is made through book adjustment or book transfer. Such book adjustment or transfer in the case of specified Government departments is to be shown here.
G1 to G6	Arrears of revenue includes,- (a) amount that was payable earlier but not paid; (b) amount pending recovery on finalization of adjudication or appellant stage, as the case may be; (c) amount pending in appeals without having any stay for recovery; or (d) amount arising on finalization of provisional assessment etc.
G7	Any amount collected in excess of the service tax assessed or determined and paid on any taxable service from the recipient of taxable service in any manner, has to be paid to the credit of the Central Government as per the provisions of section 73A of the Finance Act, 1994. Assessee may furnish such amount here.
G10	Amount of late fee paid for any delayed filing of return has to be entered here as prescribed under Rule 7C of Service Tax Rules, 1994

G11	Any other amount paid may be specified. (It may include amount paid in terms of any adjudication order, any appellate order, etc.)
H2	Against source documents, following details may be furnished,- (i) For adjustment under rule 6(3) of Service Tax Rules, 1994, furnish details of earlier return, from where excess amount is derived (ii) For adjustment under rule 6(4A), furnish details of acknowledgement No. of intimation to Superintendent as required to be furnished in the rules; (iii) For arrears, interest and penalty, the source document/period is as follows,- (a) in case these are paid <i>suomoto</i> by the assessee, the period for which such amount is paid may be furnished (b) if paid consequent to a show cause notice (SCN) or order, the source document is relevant SCN No./Demand Notice No., Order-in-Original No. or Order-in-Appeal No., or any other order , etc.; (iv) For adjustment of excess amount of service tax paid on the service of 'Renting of Immovable Property' in case the taxpayer has not availed the deduction of property tax paid in terms of Rule 6(4C) of the Service Tax Rules, 1994 read with Notification No. 29/2012-ST, dated 20 <sup>th</sup> June, 2012 and he opts to avail such deduction against his service tax liability within 1 year from the date of payment of such property tax, the source document is original receipt issued by the concerned department of State Government showing the payment of such property tax.
I3.1.2	(i) The terms " input", "capital goods", "input services" and " input service distributor" may be understood as defined in the CENVAT Credit Rules, 2004; (ii) Against S. No. I3.1.2.1, I3.1.2.2 & I3.1.2.3, the details of CENVAT credit availed on input/ input services/ capital goods, received directly by the assessee, are to be shown. In other words, these figures would not include the service tax credit received from input service distributor (i.e., office of the manufacturer or output service provider, which receives invoices towards purchases of input services and issues invoices/bills /challans for distribution of such credit, in terms of Rule 7 of CENVAT Credit Rules, 2004). (iii) Against S. No. I3.1.2.4, furnish the details of service tax credit as received from 'input service distributor'. (iv) Against S. No. I3.1.2.5, details have to be filled only by Large Taxpayer Unit who has opted to operate as LTU.-
I3.1.3.4	This has to be filled only by the assessee who are engaged in both, providing taxable service as well as manufacturing and clearance of excisable goods. This entry would also include excise duty paid on capital goods and inputs removed as waste and scrap, in terms of rule 3(5A) of CCR, 2004
I3.1.3.7	If the assessee has utilised CENVAT credit for making any payment, adjustment or reversal such as in the case of write off of value of inputs or capital goods as per rule 3(5B) of CCR, 2004; reversal of CENVAT credit on the inputs used in the manufacture of goods which have been ordered to be remitted as per rule 3(5C) of CCR, 2004; the payment of arrears of revenue etc., such details may be mentioned here.
I3.3 & J3	Details of credit taken and utilised in respect of Secondary and Higher Education cess has to be shown separately in these columns
J	This information has to be furnished by an input service distributor only.
J1.4, J2.4 & J3.4	This information has to be furnished by an input service distributor who has availed CENVAT credit of the service tax paid on the services used in a unit which is exclusively engaged in manufacturing of exempted excisable goods or providing exempted services, as such credit is not liable to be distributed in terms of Rule 7(b) of the CENVAT Credit Rules, 2004

**ANNEXURE TO INSTRUCTIONS OF ST-3 RETURN**  
**DESCRIPTION OF TAXABLE SERVICES FOR FILLING UP SERVICE TAX**  
**RETURN (ST-3)**

Sl. No.	Description of Taxable Services
(1)	(2)

Sl. No.	Description of Taxable Services
(1)	(2)
1	Stockbroker service
2	General insurance service
3	Advertising agency services
4	Courier agency service
5	Consulting engineer services
6	Custom House Agent service
7	Steamer agent services
8	Clearing and forwarding agent services
9	Manpower recruitment / supply agency service
10	Air travel agent services
11	Mandap keeper service
12	Tour operator services
13	Rent-a-cab scheme operator services
14	Architect services
15	Interior decoration / Designer services
16	Management or business consultant service
17	Chartered accountant services
18	Cost accountant service
19	Company secretary service
20	Real estate agent service
21	Security / detective agency service
22	Credit rating agency service
23	Market research agency service
24	Underwriter service
25	Scientific & technical consultancy services
26	Photography service
27	Convention service
28	Online information and database access service and / or retrieval service through computer network
29	Video production agency / video tape production service
30	Sound recording studio or agency services
31	Broadcasting service
32	Insurance auxiliary service in relation to general insurance
33	Banking and other Financial services
34	Port service (major ports)
35	Service for repair, reconditioning, restoration, or decoration or any other similar services, of any motor vehicle
36	Beauty parlours / beauty treatment

Sl. No.	Description of Taxable Services
(1)	(2)
37	Cargo handling service
38	Cable operators
39	Dry cleaning service
40	Event management
41	Fashion design
42	Health club and fitness centre service
43	Life insurance service
44	Insurance auxiliary service concerning life insurance business
45	Rail travel agent's service
46	Storage and warehousing services
47	Business auxiliary service
48	Commercial training or coaching
49	Erection, commissioning and installation
50	Franchise service
51	Internet café
52	Maintenance or repair service
53	Technical testing and analysis service
54	Technical inspection and certification agency service
55	Foreign exchange broker service
56	Other port (minor port) service
57	Airport services by airport authority
58	Transport of goods by air
59	Business exhibition service
60	Transport of goods by road / goods transport agency service
61	Construction services other than residential complex, including commercial / industrial buildings or civil structures
62	Services by holder of intellectual property right providing intellectual property services other than copyright
63	Opinion poll agency service
64	Outdoor catering
65	Services by a programme producer
66	Survey and exploration of mineral
67	Pandal or shamiana service
68	Travel agent for booking of passage (other than air / rail travel agents)
69	Services provided by recognised / registered associations in relation to forward contracts
70	Transport of goods through pipeline or other conduit
71	Site formation and clearance, excavation, earth moving and demolition services
72	Dredging of rivers, ports harbours, backwaters, estuaries, etc.

Sl. No.	Description of Taxable Services
(1)	(2)
73	Survey and map making service
74	Cleaning services
75	Club or association service
76	Packaging service
77	Mailing list compilation and mailing service
78	Construction of residential complex service
79	Service provided by a registrar to an issue
80	Service provided by a share transfer agent
81	Automated Teller Machine operations, maintenance or management service
82	Service provided by a recovery agent
83	Selling of space or time slots for advertisements
84	Sponsorship service provided to body-corporate or firm including sports sponsorships
85	Transport of passengers embarking on domestic / international journey by air
86	Transport of goods by rail including transport of goods in containers by rail (for the present, transport of passengers by rail in air-conditioned class/first class also may be paid under this description/accounting code)
87	Business support service
88	Auction service
89	Public relation management service
90	Ship management service
91	Internet telecommunication services (includes internet telephony Service which became taxable from 01.05.2006)
92	Transport of persons by cruise ship
93	Credit card, debit card, charge card or other payment card related services
94	Services of telegraph authority in relation to telecommunication service
95	Mining of mineral, oil or gas service
96	Renting of immovable property services
97	Works contract service
98	Development and supply of content for use in telecom services, advertising agency, etc.
99	Asset management including portfolio management and fund management
100	Design service other than interior decoration and fashion designing
101	Information technology software service
102	Services provided by an insurer of life insurance under Unit Linked Insurance Plan (ULIP)
103	Services provided by a recognized stock exchange in relation to transaction in securities
104	Services provided by recognised / registered associations in relation to clearance or settlement of transactions in goods or forward contracts
105	Services provided by a processing and clearing house in relation to securities, goods and forward contracts
106	Services provided by any person in relation to supply of tangible goods



Sl. No.	Description of Taxable Services
(1)	(2)
107	Cosmetic and plastic surgery service
108	Transport of goods by coastal shipping (services by way of transportation of goods by inland waterways is placed in the negative list)
109	Legal consultancy service
110	Promotion, marketing, organizing or assisting in organizing games of chance including lottery, etc.
111	Health services by a clinical establishment, health check-up / diagnosis , etc.
112	Maintenance of medical records
113	Service of promotion or marketing of brand of goods / services / events
114	Service of permitting commercial use or exploitation of events
115	Electricity exchange service
116	Copyright service – transfer temporarily / permit use or enjoyment
117	Special services provided by builders
118	Restaurant service
119	Service of providing accommodation in hotels, inn, guest house, club or campsite whatever name called.
120	Other taxable services (services other than the 119 listed above)

F.No: 137/98/2006-CX4 ( Part I)

(Rajkumar Digvijay)

Under Secretary to the Government of India

*Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-ST, dated 28<sup>th</sup> June, 1994 vide number G.S.R 546(E), dated the 28<sup>th</sup> June, 1994 and was last amended by notification No 48/2012-Service Tax, dated the 30<sup>th</sup> November, 2012, vide GSR858(E) dated the 30<sup>th</sup> November 2012.*

**2/2013 - Construction of Complex - Taxable value 25% or 30%**

**<sup>436</sup>No.2/2013—Service Tax1st March, 2013**

G.S.R....(E) In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2012 Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 468 (E), dated the 20th June, 2012, namely:—

In the said notification, in the TABLE, for serial number 12 and the entries relating thereto, the following serial number and the entries shall be substituted, namely:—

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,—	25	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004;
	(i) for residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one crore; (ii) for other than the (i) above.	30	(ii) The value of land is included in the amount charged from the service receiver.”.

3. The notification shall come in to force on the 1st day of March, 2013.

**[F.No. 334 /3/ 2013 TRU]**

(Raj Kumar Digvijay)

Under Secretary to the Government of India

Note.— The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 26/2012—Service Tax, dated 20th June, 2012, vide number G.S.R. 468 (E), dated the 20th June, 2012 and this notification has not been amended so far.

<sup>436</sup> This Notification stands amended vide **Not. No. 9/2013 w.e.f. 8 May 2013**

### **3/2013 - Mega Exemption Amended**

#### **Notification No. 3 /2013 - Service Tax**

New Delhi, the 1st March, 2013

G.S.R....(E)- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* G.S.R. 467 (E), dated the 20th June, 2012, namely:-

In the said notification,-

1. in the opening paragraph,-

(i) in entry 9, for the words " provided to or by", the words "provided to " shall be substituted;

(ii) for entry 15, the following entry shall be substituted, namely:-

"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;";

(iii) for entry 19, the following entry shall be substituted, namely:-

"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;";

(iv) in entry 20, items (a),(d) and (e) shall be omitted;

(v) for entry 21, the following entry shall be substituted, namely:- "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;";

(vi) entry 24, shall be omitted;

(vii) in entry 25, in item (b), for the words, "a vessel or an aircraft", the words "a vessel" shall be substituted;

2. In paragraph 2 relating to Definitions, in clause (k),-

(a) in sub-clause (iv), the word "or" shall be omitted;

(b) sub-clause (v), shall be omitted; .

3. This notification shall come in to force on the 1st day of April, 2013.

**[F.No. 334 /3/ 2013-TRU]**

(Raj Kumar Digvijay)

Under Secretary to the Government of India

Note.- The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 25/2012 - Service Tax, dated 20th June, 2012, *vide* G.S.R. 467 (E), dated the 20th June, 2012 and was last amended by notification No. 49/2012-Service Tax, dated the 24th December, 2012 *vide* G.S.R. 923 (E), dated the 24th December, 2012.

## **4/2013 - Advance Ruling (Applicable for Public Company)**

### **Notification No. 4/2013 - Service Tax 1st March, 2013**

G.S.R....(E)- In exercise of the powers conferred under sub-clause (iii) of clause (b) of section 96A of the Finance Act, 1994 (32 of 1994), the Central Government hereby specifies **"the resident public limited company"** as class of persons for the purposes of the said clause.

*Explanation.*- For the purposes of this notification,-

(a) "public limited company" shall have the same meaning as is assigned to "public company" in clause (iv) of sub-section (1) of section 3 of the Companies Act, 1956 (1 of 1956) and shall include a private company that becomes a public company by virtue of section 43A of the said Act;

(b) "resident" shall have the same meaning as is assigned to it in clause (42) of section 2 of the Income-tax Act, 1961 (43 of 1961) in so far as it applies to a company.

**[F.No. 334 /3/ 2013-TRU]**

(Raj Kumar Digvijay)

Under Secretary to the Government of India



4. Date of Communication of a copy of the order appealed against.
5. State or Union territory and the Commissionerate in which the order or decision of assessment, penalty was made.
6. If the order appealed against relates to more than one Commissionerate, mention the names of all the Commissionerates, so far as it relates to the appellant.
7. Designation and address of the adjudicating authority in case where the order appealed against is an order of the Commissioner (Appeals).
8. Address to which notices may be sent to the appellant.
9. Address to which notices may be sent to the respondent.
10. Whether the decision or order appealed against involves any question having a relation to the rate of service tax or to the value of taxable service for the purpose of assessment.
11. Description of service and whether in 'negative list'.
12. Period of dispute.
13. (i) Amount of service tax, if any, demanded for the period of dispute .  
(ii) Amount of interest involved upto the date of the order appealed against.  
(iii) Amount of refund, if any, rejected or disallowed for the period of dispute.  
(iv) Amount of penalty imposed.
14. (i) Amount of service tax or penalty or interest deposited. If so, mention the amount deposited under each head in the box below. (A copy of the challan under which the deposit is made should be furnished)

Service Tax	Penalty	Interest

(ii) If not, whether any application for dispensing with such deposit has been made?

15. Does the order appealed against also involve any central excise duty demand, and related fine or penalty, so far as the appellant is concerned?

16. Does the order appealed against also involve any customs duty demand, and related penalty, so far as the appellant is concerned?

17. Subject matter of dispute in order of priority. (please choose two items from the list below)

**[i) Taxability - Sl. No. of Negative List, ii) Classification of Services, iii) Applicability of Exemption Notification-Notification No., iv) Export of services., v) Import of services., vi) Point of Taxation., vii) CENVAT., viii) Refund., ix) Valuation., x) Others.]**

Priority 1	Priority 2

18. Central Excise Assessee Code, if registered with Central Excise.

19. Give details of Importer Exporter Code (IEC), if registered with Director General of Foreign Trade.

20. If the appeal is against an Order-in-Appeal of Commissioner (Appeals), the number of Orders-in-Original covered by the said Order-in-Appeal.

21. Whether the respondent has also filed appeal against the order against which this appeal is made?

22. If answer to serial number 21 above is 'yes', furnish the details of appeal.

23. Whether the appellant wishes to be heard in person?

24. Reliefs claimed in appeal.

**Statement of facts**

**Grounds of appeal**

<b>Signature of the authorised representative, if any.</b>	<b>Signature of the appellant</b>
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**Verification**

I..... the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today , the .....day of .....20.....

**Signature of the authorised representative, if any.**

**Signature of the appellant**



**Notes.-**

- (1) The grounds of appeal and the form of verification shall be signed by the appellant in accordance with rule 3 of the Central Excise (Appeals) Rules, 2001.
- (2) The appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate accompanied by an equal number of copies of the order (one of which at least shall be a certified copy) appealed against.
- (3) The appeal shall be in English (or Hindi) and should set forth, concisely and under distinct heads, the grounds of appeal without any argument or narrative and such grounds should be numbered consecutively.
- (4) The appeal shall be accompanied by such fee as prescribed under sub-section (6) of section 86 of the Act and shall be paid through a crossed bank draft drawn in favour of the Assistant Registrar of the Bench of the Tribunal on a branch of any nationalized bank located at the place where the Bench is situated.

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\*15 digit Permanent Account Number (PAN) - based registration number to be mandatorily furnished by registered persons.

\*\*10 digit Commissionerate/ Division/ Range code (Premises Code) to be mandatorily furnished by registered persons. This 'premises code' is available in the ST-2 Registration Certificate itself. In case of Centralized registrations the 'premises code' of the Main Office for which Centralized registration has been taken, should be indicated.

\*\*\* To be furnished by non-registered persons. Unique Identification (UID) number to be furnished where PAN is not available.

**FORM ST – 6**  
[See rule 9 (3)]

**Form of Memorandum of Cross-Objections to the Appellate Tribunal under sub-section (4) of section 86 of Finance Act, 1994**

**In the Customs, Central Excise and Service Tax Appellate Tribunal**

Cross objection No \_\_\_\_\_ of 20....

Appeal No \_\_\_\_\_ of 20....

.....Appellant

Versus

..... Respondent

1.



(ii) If not, whether any application for dispensing with such deposit has been made?

11. (A) In case of cross-objections filed by the Commissioner of Central Excise/ Service Tax/ Large Taxpayer Unit

(i) Amount of service tax demand dropped or reduced for the period of dispute

(ii) Amount of interest demand dropped or reduced for the period of dispute

(iii) Amount of refund sanctioned or allowed for the period of dispute

(iv) Whether no or less penalty imposed?

(B) Whether an application for staying the operation of the order appealed against has been made?

12. Subject matter of dispute in order of priority. (please choose two items from the list below)

**[i) Taxability - Sl. No. of Negative List, ii) Classification of Services, iii) Applicability of Exemption Notification-Notification No., iv) Export of services., v) Import of services., vi) Point of Taxation., vii) CENVAT., viii) Refund., ix) Valuation., x) Others.]**

Priority 1	Priority 2

13. Central Excise Assessee Code, if registered with Central Excise.

14. Give details of Importer Exporter Code, if registered with Director General of Foreign Trade.

15. Reliefs claimed in memorandum of cross -objections.

**Grounds of cross objections**

(1)

(2)

(3)

(4)

<b>Signature of the authorised representative, if any</b>	<b>Signature of the respondent or his authorised representative</b>
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**Verification**

I, the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the \_\_\_\_\_ day of \_\_\_\_\_ 20...\_\_\_\_\_

**Place:**

**Date:**

<b>Signature of the authorised representative, if any</b>	<b>Signature of the respondent or his authorised representative</b>
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**Notes.-**

(1) If the memorandum is filed by any person, other than the Commissioner of Central Excise, the grounds of cross-objection and the form of verification shall, be signed by the respondent in accordance with rule 3 of the Central Excise (Appeals) Rules, 2011.

(2) The memorandum of cross-objections shall be filed in quadruplicate accompanied by an equal number of copies of the order (one of which at least shall be a certified copy) appealed against.

(3) The memorandum of cross-objections shall be in English (or Hindi) and should set forth, concisely and under distinct heads, the grounds of the cross-objection without any argument or narrative and such grounds should be numbered consecutively.

(4) The number and year of appeal or application, as the case may be, as allotted by the office of the Appellate Tribunal and appearing in the notice of appeal or application, as the case may be, received by the respondent is to be filled in by the respondent.

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\*15 digit Permanent Account Number (PAN) - based registration number to be mandatorily furnished by registered persons

\*\*10 digit Commissionerate/ Division/ Range code (Premises Code) to be mandatorily furnished by registered persons. This 'premises code' is available in the ST-2 Registration Certificate itself. In case of Centralized registrations the 'premises code' of the Main Office for which Centralized registration has been taken, should be indicated.

\*\*\* To be furnished by non-registered persons. Unique Identification (UID) number to be furnished where PAN is not available.



8. Date of receipt of the order referred to in (5) above by the Committee of Commissioners of Central Excise or by the Committee of Chief Commissioners of Central Excise, as the case may be.

9. Whether the decision or order appealed against involves any question having a relation to the rate of service tax or to the value of service for the purpose of assessment.

10. Description of service and whether under 'negative list'.

11. Period of dispute

12 (i) Amount of service tax demand dropped or reduced for the period of dispute

(ii) Amount of interest demand dropped or reduced for the period of dispute

(ii) Amount of refund sanctioned or allowed for the period of dispute

(iv) Whether no or less penalty imposed?

13. Whether any application for stay of the operation of the order appealed against has been made?

14. Subject matter of dispute in order of priority (please choose two items from the list below)

**[i) Taxability - Sl. No. of Negative List, ii) Classification of Services, iii) Applicability of Exemption Notification-Notification No., v) Export of services., v) Import of services., vi) Point of Taxation., vii) CENVAT., viii) Refund., ix) Valuation., x) Others.]**

Priority 1	Priority 2

15. If the application is against an Order-in- Appeal of Commissioner (Appeals), the number of Orders-in-Original covered by the said Order-in-Appeal.

16. Whether the respondent has also filed an appeal against the order against which this appeal is made?

17. If answer to serial number 16 above is 'yes', furnish the details of the appeal.

18. Whether the applicant wishes to be heard in person?

19. Reliefs claimed in application.

### **Statement of facts**

### **Grounds of application**

<b>Signature of the authorised officer, if any.</b>	<b>Signature of the appellant</b>
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**Note.**-The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate accompanied by an equal number of copies of the decision or order (one of which at least shall be a certified copy) passed by the Commissioner of Central Excise/ Service Tax/ Large Taxpayer Unit and a copy of the order passed by the Committee of Commissioners under sub-section (2A) of section 86 of the Act or an order passed by the Committee of Chief Commissioners under sub-section (2) of section 86 of the Act.

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\*15 digit Permanent Account Number (PAN) - based registration number to be furnished if respondent is a registered person.

\*\*10 digit Commissionerate/ Division/ Range code (Premises Code) to be mandatorily furnished for the registered person. This 'premises code' is available in the ST-2 Registration Certificate itself. In case of Centralized registrations the 'premises code' of the Main Office for which Centralized registration has been taken, should be indicated.

\*\*\* To be furnished for respondents who are non -registered persons. Unique Identification (UID) number to be furnished where PAN is not available."

**F. No 390/Misc/46/2011-JC**

**(Sunil Kumar Sinha)**  
**Director to the Government of India**

**Note:-** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-ST, dated 28th June, 1994 vide number G.S.R 546(E), dated the 28th June, 1994 and were last amended by notification No 1/2013-Service Tax, dated the 22nd February, 2013 vide G.S.R. 121(E) dated the 22nd February, 2013.

## 6/2013 - Focus Market Scheme

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

### Notification No.06 / 2013 - Service Tax

New Delhi, dated the 18<sup>th</sup> April, 2013

G.S.R..... (E). 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), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided or agreed to be provided against a scrip by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the said Act.

2. Application. – This notification shall be applicable to the **Focus Market Scheme** duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.14 of the Foreign Trade Policy.

3. The exemption shall be subject to the following conditions, namely:-

(a) that the scrip is issued against exports to the countries notified by the Government of India in Appendix 37C of the Handbook of Procedures, Volume I in terms of entitlement under paragraph 3.14.2 or against exports to the countries or regions specified in paragraph 3.14.4(e) or paragraph 3.14.5(e) of the Foreign Trade Policy, as the case may be<sup>437</sup>:

*Provided* that the following categories of exports (specified in paragraph 3.17.2 and 3.14.3 of the Foreign Trade Policy) shall **not be counted** for calculation of export performance or for computation of entitlement under paragraph 3.14.2 of the Foreign Trade Policy<sup>438</sup>, namely:-

- (i) the Export Oriented Units or Electronic Hardware Technology Parks or Biotechnology Parks which are availing direct tax benefits or exemption;
- (ii) the export of imported goods covered under Para 2.35 of the Foreign Trade Policy;
- (iii) the exports through transshipment, meaning thereby that exports originating in third country but transhipped through India;
- (iv) the deemed exports;
- (v) the exports made by Special Economic Zone units or Special Economic Zone products exported through Domestic Tariff Area units;

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<sup>437</sup> Not. No. 11/2013-ST dated 13 June 2013

<sup>438</sup> *Ibid*



- (vi) the items, which are restricted or prohibited for export under Schedule-2 of Export Policy in ITC (HS);
- (vii) supplies made to Special Economic Zone units;
- (viii) the service exports;
- (ix) diamonds and other precious, semi precious stones;
- (x) Gold, silver, platinum and other precious metals in any form, including plain and studded jewellery;
- (xi) Ores and Concentrates, of all types and in all forms;
- (xii) Cereals, of all types;
- (xiii) the Sugar, of all types and in all forms;
- (xiv) Crude or Petroleum oil and Crude or Petroleum based products covered under ITC HS codes 2709 to 2715, of all types and in all forms; and
- (xv) the export of milk and milk products covered under ITC HS Codes 0401 to 0406, 19011001, 19011010, 2105 and 3501;
- <sup>439</sup>(xvi) Export of Meat and Meat Products;
- (xvii) Export of Cotton;
- (xviii) Export of Cotton Yarn;
- (xix) Export which are subject to Minimum Export Price or Export Duty
- (b) that the scrip is registered with the Customs Authority at the port of registration (hereinafter referred to as the said Customs Authority);
- (c) that the holder of the scrip, to whom taxable services are provided or agreed to be provided shall be located in the taxable territory;
- (d) that the holder of the scrip who may either be the person to whom the scrip was originally issued or a transferee-holder, presents the scrip to the said Customs Authority along with a letter and an invoice or challan or bill, as the case may be, issued under rule 4A of the Service Tax Rules, 1994 by the service provider indicating details of his jurisdictional Central Excise Officer (hereinafter referred to as the said Officer) and the description, value of the taxable service provided or agreed to be provided and service tax leviable thereon;
- (e) that the said Customs Authority, taking into account the debits already made under notification number 93/2009-Customs, dated the 11th September, 2009, notification No.30/2012-Central Excise, dated the 9<sup>th</sup> July, 2012 and this exemption, shall debit the service tax leviable, but for this exemption in or on the reverse of the scrip and also mention the necessary details thereon, updates its own records and sends written advice of these actions to the said Officer;
- (f) that the date of debit of service tax leviable, in the scrip, by the said Customs Authority shall be taken as the date of payment of service tax;

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<sup>439</sup> Inserted vide Not. No. 17/2013-ST dated 26.12.2013

- (g) that in case the service tax leviable as per the point of taxation determined in terms of the Point of Taxation Rules, 2011 is prior to date of debit or that the rate of tax determined in terms of rule 4 of the Point of Taxation of Rules, 2011, is in excess of the rate of service tax mentioned in the invoice, bill or challan, as the case may be, the holder of the scrip shall pay such interest or short-paid service tax along with interest, as the case may be;
- (h) that the holder of the scrip presents the scrip debited by the said Customs Authority within thirty days to the said Officer, along with an undertaking addressed to the said Officer, that in case of any service tax short debited in the scrip, shall pay such service tax along with applicable interest;
- (i) that based on the said written advice and undertaking, the said Officer shall verify and validate, on the reverse of the scrip, the details of the service tax leviable, which were debited by the said Customs Authority, and keep a record of payment of such service tax and interest, if any;
- (j) that the service provider retains a copy of the scrip, debited by the said Customs Authority and verified by the said Officer and duly attested by the holder of the scrip, in support of the provision of taxable services under this notification; and
- (k) that the said holder of the scrip, to whom the taxable services were provided or agreed to be provided shall be entitled to avail the drawback or CENVAT credit of the service tax leviable under section 66B of the said Act, against the service tax debited in the scrip and validated by the said Officer.

<sup>440</sup>Provided further that for the purpose of calculation of export performance or for computation of entitlement under paragraph 3.14.4 or paragraph 3.14.5 of the Foreign Trade Policy, the incremental growth shall be in respect of each exporter [Importer Exporter Code (IEC) holder] without any scope of combining the export for group company or for transferring export performance from any other IEC holder and the incremental growth shall be in terms of freely convertible currency to the designated markets. The following categories of exports shall not be counted for calculation of export performance or for computation of entitlement:

- (i) Export of imported goods or exports made through trans-shipment;
- (ii) Export from SEZ or EOU or EHTP or STPI or BTP or FTWZ;
- (iii) Deemed Exports;
- (iv) Service Exports;
- (v) Third Party exports;
- (vi) Diamond, Gold, Silver, Platinum, other precious metal in any form including plain and studded jewellery and other precious and semi-precious stones;
- (vii) Ores and concentrates of all types and in all formations;

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<sup>440</sup> Inserted vide Not. No. 11/2013-ST dated 13 June 2013

- (viii) Cereals of all types;
- (ix) Sugar of all types and all forms;
- (x) Crude or petroleum oil and crude or primary and base products of all types and all formulations;
- (xi) Export of milk and milk products;
- (xii) Export performance made by one exporter on behalf of other exporter;
- (xiii) Supplies made to SEZ units;
- (xiv) Items, export of which requires an export authorisation (except SCOMET);
- (xv) Export of Meat and Meat Products;
- (xvi) Exports to Singapore, UAE and Hong Kong,
- (xvii) SEZ or EOU or EHTP or BTP or FTWZ products exported through DTA units
- (xviii) Cotton (for the paragraph 3.14.5 of the Foreign Trade Policy);<sup>441</sup>
- (xx) Export which are subject to Minimum Export Price or Export Duty (for the paragraph 3.14.5 of the Foreign Trade Policy)

4. Any amount due to the Central Government under this notification shall be recoverable under the provisions of the said Act and the rules made there under.

*Explanation* - For the purposes of this notification,-

(A) "Foreign Trade Policy" means the Foreign Trade Policy, 2009-14, published by the Government of India in the Ministry of Commerce and Industry, vide notification No.01 (RE 2012)/2009-2014, dated the 5<sup>th</sup> June, 2012, as amended from time to time.

(B) "Handbook of Procedures Volume 1" means the Handbook of Procedures Volume 1, 2009-14, published by the Government of India in the Ministry of Commerce and Industry, vide Public Notice No.01 (RE 2012)/2009-2014, dated the 5<sup>th</sup> June, 2012, as amended from time to time.

(C) "Point of taxation" shall have the same meaning assigned to it in clause (e) of rule 2 of the Point of Taxation Rules, 2011.

(D) "Regional Authority" means the authority competent to grant a duty credit scrip under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992).

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<sup>441</sup> Omitted vide Not. No. 5/2014-ST dated 24.02.2014

(E) "Scrip" means Focus Market Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.14 of the Foreign Trade Policy;

[F.No.354/55/2013-TRU]

(Raj Kumar Digvijay)  
Under Secretary to the Government of India

## 7/2013 - Focus Product Scheme

[PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

### Notification No. 07/ 2013 - Service Tax

New Delhi, dated the 18<sup>th</sup> April, 2013

G.S.R..... (E). 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), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided or agreed to be provided against a scrip by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the said Act.

2. Application. – This notification shall be applicable to the **Focus Product Scheme** duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.15 of the Foreign Trade Policy.

3. The exemption shall be subject to the following conditions, namely:-

(a) that the scrip is issued against exports of the products listed by the Government of India in Appendix 37D of the Handbook of Procedures, Volume I:

*Provided* that the following categories of exports (specified in paragraph 3.17.2 of the Foreign Trade Policy) shall not be counted for calculation of export performance or for computation of entitlement under the Focus Product Scheme, namely:-

(i) the Export Oriented Units or Electronic Hardware Technology Parks or Biotechnology Parks which are availing direct tax benefits or exemption;

(ii) the export of imported goods covered under Para 2.35 of the Foreign Trade Policy;

(iii) the exports through transshipment, meaning thereby that exports originating in third country but transhipped through India;

(iv) the deemed exports;

(v) the exports made by Special Economic Zone units or Special Economic Zone products exported through Domestic Tariff Area units;

(vi) the items, which are restricted or prohibited for export under Schedule-2 of Export Policy in ITC (HS);

(b) that the scrip is registered with the Customs Authority at the port of registration (hereinafter referred to as the said Customs Authority);

(c) that the holder of the scrip, to whom taxable services are provided or agreed to be provided shall be located in the taxable territory;

(d) that the holder of the scrip who may either be the person to whom the scrip was originally issued or a transferee-holder, presents the scrip to the said Customs Authority along with a letter and an invoice or challan or bill, as the case may be,

issued under rule 4A of the Service Tax Rules, 1994 by the service provider indicating details of his jurisdictional Central Excise Officer (hereinafter referred to as the said Officer) and the description, value of the taxable service provided or agreed to be provided and service tax leviable thereon;

(e) that the said Customs Authority, taking into account the debits already made under notification number 92/2009-Customs, dated the 11th September, 2009, notification No.29/2012-Central Excise, dated the 9<sup>th</sup> July, 2012 and this exemption, shall debit the service tax leviable, but for this exemption in or on the reverse of the scrip and also mention the necessary details thereon, updates its own records and sends written advice of these actions to the said Officer;

(f) that the date of debit of service tax leviable, in the scrip, by the said Customs Authority shall be taken as the date of payment of service tax;

(g) that in case the service tax leviable as per the point of taxation determined in terms of the Point of Taxation Rules, 2011 is prior to date of debit or that the rate of tax determined in terms of rule 4 of the Point of Taxation of Rules, 2011, is in excess of the rate of service tax mentioned in the invoice, bill or challan, as the case may be, the holder of the scrip shall pay such interest or short-paid service tax along with interest, as the case may be;

(h) that the holder of the scrip presents the scrip debited by the said Customs Authority within thirty days to the said Officer, along with an undertaking addressed to the said Officer, that in case of any service tax short debited in the scrip, shall pay such service tax along with applicable interest;

(i) that based on the said written advice and undertaking, the said Officer shall verify and validate, on the reverse of the scrip, the details of the service tax leviable, which were debited by the said Customs Authority, and keep a record of payment of such service tax and interest, if any;

(j) that the service provider retains a copy of the scrip, debited by the said Customs Authority and verified by the said Officer and duly attested by the holder of the scrip, in support of the provision of taxable services under this notification; and

(k) that the said holder of the scrip, to whom the taxable services were provided or agreed to be provided shall be entitled to avail the drawback or CENVAT credit of the service tax leviable under section 66B of the said Act, against the service tax debited in the scrip and validated by the said Officer.

4. Any amount due to the Central Government under this notification shall be recoverable under the provisions of the said Act and the rules made there under.

*Explanation* - For the purposes of this notification, -

(A) "Foreign Trade Policy" means the Foreign Trade Policy, 2009-14, published by the Government of India in the Ministry of Commerce and Industry, vide notification No.01 (RE 2012)/2009-2014, dated the 5<sup>th</sup> June, 2012, as amended from time to time.

(B) "Handbook of Procedures Volume 1" means the Handbook of Procedures Volume 1, 2009-14, published by the Government of India in the Ministry of Commerce and Industry, vide Public Notice No.01 (RE 2012)/2009-2014, dated the 5<sup>th</sup> June, 2012, as amended from time to time.

(C) "Point of taxation" shall have the same meaning assigned to it in clause (e) of rule 2 of the Point of Taxation Rules, 2011.

(D) "Regional Authority" means the authority competent to grant a duty credit scrip under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992).

(E) "Scrip" means Focus Product Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.15 of the Foreign Trade Policy.

[F.No.354/55/2013-TRU]

(Raj Kumar Digvijay)  
Under Secretary to the Government of India

## 8/2013 - Vishesh Krishi and Gram Udyog Yojana

### Notification No. 08/ 2013 - Service Tax

New Delhi, dated the 18<sup>th</sup> April, 2013

G.S.R..... (E). – 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), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided or agreed to be provided against a scrip by a person located in the taxable territory, from the whole of the service tax leviable thereon under section 66B of the said Act.

2. Application. – This notification shall be applicable to the **Vishesh Krishi and Gram Udyog Yojana** (Special Agriculture and Village Industry Scheme) duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.13.2 of the Foreign Trade Policy.

3. The exemption shall be subject to the following conditions, namely:-

(a) that the scrip is issued against exports of the products listed in Appendix 37A of the Handbook of Procedures, Volume I:

*Provided* that the following categories of exports (specified in paragraph 3.17.2 of the Foreign Trade Policy) shall not be counted for calculation of export performance or for computation of entitlement under the Vishesh Krishi and Gram Udyog Yojana, namely:-

(i) the Export Oriented Units or Electronic Hardware Technology Parks or Biotechnology Parks which are availing direct tax benefits or exemption;

(ii) the export of imported goods covered under Para 2.35 of the Foreign Trade Policy;

(iii) the exports through transshipment, meaning thereby that exports originating in third country but transhipped through India;

(iv) deemed exports;

(v) the exports made by Special Economic Zone units or Special Economic Zone products exported through Domestic Tariff Area units;

(vi) the items, which are restricted or prohibited for export under Schedule-2 of Export Policy in ITC (HS);

(b) that the scrip is registered with the Customs Authority at the port of registration (hereinafter referred to as the said Customs Authority);

(c) that the holder of the scrip, to whom taxable services are provided or agreed to be provided shall be located in the taxable territory;

(d) that the holder of the scrip who may either be the person to whom the scrip was originally issued or a transferee-holder, presents the scrip to the said Customs Authority along with a letter and an invoice or challan or bill, as the case may be, issued under rule 4A of the Service Tax Rules, 1994 by the service provider indicating details of his jurisdictional Central Excise Officer (hereinafter referred to as the said Officer) and the description, value of the taxable service provided or agreed to be provided and service tax leviable thereon;

(e) that the said Customs Authority, taking into account the debits already made under notification number 95/2009-Customs, dated the 11<sup>th</sup> September, 2009, notification No.32/2012-Central Excise, dated the 9<sup>th</sup> July, 2012 and this exemption, shall debit the service tax leviable, but for this exemption in or on the reverse of the



scrip and also mention the necessary details thereon, updates its own records and sends written advice of these actions to the said Officer;

(f) that the date of debit of service tax leviable, in the scrip, by the said Customs Authority shall be taken as the date of payment of service tax;

(g) that in case the service tax leviable as per the point of taxation determined in terms of the Point of Taxation Rules, 2011 is prior to date of debit or that the rate of tax determined in terms of rule 4 of the Point of Taxation of Rules, 2011, is in excess of the rate of service tax mentioned in the invoice, bill or challan, as the case may be, the holder of the scrip shall pay such interest or short-paid service tax along with interest, as the case may be;

(h) that the holder of the scrip presents the scrip debited by the said Customs Authority within thirty days to the said Officer, along with an undertaking addressed to the said Officer, that in case of any service tax short debited in the scrip, shall pay such service tax along with applicable interest;

(i) that based on the said written advice and undertaking, the said Officer shall verify and validate, on the reverse of the scrip, the details of the service tax leviable, which were debited by the said Customs Authority, and keep a record of payment of such service tax and interest, if any;

(j) that the service provider retains a copy of the scrip, debited by the said Customs Authority and verified by the said Officer and duly attested by the holder of the scrip, in support of the provision of taxable services under this notification; and

(k) that the said holder of the scrip, to whom the taxable services were provided or agreed to be provided shall be entitled to avail the drawback or CENVAT credit of the service tax leviable under section 66B of the said Act, against the service tax debited in the scrip and validated by the said Officer.

4. Any amount due to the Central Government under this notification shall be recoverable under the provisions of the said Act and the rules made there under.

*Explanation* - For the purposes of this notification,-

(A) "Foreign Trade Policy" means the Foreign Trade Policy, 2009-14, published by the Government of India in the Ministry of Commerce and Industry, vide notification No.01 (RE 2012)/2009-2014, dated the 5<sup>th</sup> June, 2012, as amended from time to time.

(B) "Handbook of Procedures Volume 1" means the Handbook of Procedures Volume 1, 2009-14, published by the Government of India in the Ministry of Commerce and Industry, vide Public Notice No.01 (RE 2012)/2009-2014, dated the 5<sup>th</sup> June, 2012, as amended from time to time.

(C) "Point of taxation" shall have the same meaning assigned to it in clause (e) of rule 2 of the Point of Taxation Rules, 2011.

(D) "Regional Authority" means the authority competent to grant a duty credit scrip under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992).

(E) "Scrip" means Vishesh Krishi and Gram Udyog Yojana (Special Agriculture and Village Industry Scheme) duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.13.2 of the Foreign Trade Policy.

[F.No.354 /55/2013-TRU]

(Raj Kumar Digvijay)

Under Secretary to the Government of India

## 9/2013 - Construction service – Change in abatement

### NOTIFICATION NO 9/2013 – ST

**Dated: May 8, 2013**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 468 (E), dated the 20th June, 2012, namely:-

In the said notification, in the TABLE, for serial number 12 and the entries relating thereto, the following serial number and the entries shall be substituted, namely:-

"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:-	25	(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."
	(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;	30	
	(b) for other than the (a) above.		

**[F. No. 334 /3/ 2013-TRU]**

**(Raj Kumar Digvijay)**  
**Under Secretary to the Government of India**

**Note.-** The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 26/2012 - Service Tax, dated the 20 th June, 2012, *vid e* number G.S.R. 468 (E), dated the 20th June, 2012 and was last amended *vide* notification No.2/2013 – Service Tax, dated the 1st March, 2013, *vide* number G.S.R.152(E), dated the 1st March, 2013.

**10/2013 - Service Tax Voluntary Compliance Encouragement Rules notified**

**Not. No. 10/2013-ST**

**(Please refer Service Tax Voluntary Compliance Encouragement Rules,  
2013 at appropriate section of this book)**

## 11/2013 - Amends Not. No. 6/2013-ST

### NOTIFICATION NO. 11/2013-ST

**Dated: June 13, 2013**

**G.S.R. 373(E).**- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.6/2013-Service Tax, dated the 18th April, 2013, published in the Gazette of India, Extraordinary, Part II, section 3, subsection(i), vide number G.S.R. 254(E), dated the 18th April, 2013, namely:-

In the said notification, in para 3, in condition (a),-

- (i) for the word and figure "Volume I", the words and figures "Volume I in terms of entitlement under paragraph 3.14.2 or against exports to the countries or regions specified in paragraph 3.14.4(e) or paragraph 3.14.5(e) of the Foreign Trade Policy, as the case may be" shall be substituted;
- (ii) in the first proviso, for the words "the Focus Market Scheme", the words and figures "paragraph 3.14.2 of the Foreign Trade Policy" shall be substituted;
- (iii) after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that for the purpose of calculation of export performance or for computation of entitlement under paragraph 3.14.4 or paragraph 3.14.5 of the Foreign Trade Policy, the incremental growth shall be in respect of each exporter [Importer Exporter Code (IEC) holder] without any scope of combining the export for group company or for transferring export performance from any other IEC holder and the incremental growth shall be in terms of freely convertible currency to the designated markets. The following categories of exports shall not be counted for calculation of export performance or for computation of entitlement:

- (i) Export of imported goods or exports made through trans-shipment;
- (ii) Export from SEZ or EOU or EHTP or STPI or BTP or FTWZ;
- (iii) Deemed Exports;
- (iv) Service Exports;
- (v) Third Party exports;
- (vi) Diamond, Gold, Silver, Platinum, other precious metal in any form including plain and studded jewellery and other precious and semi-precious stones;
- (vii) Ores and concentrates of all types and in all formations;

- (viii) Cereals of all types;
- (ix) Sugar of all types and all forms;
- (x) Crude or petroleum oil and crude or primary and base products of all types and all formulations;
- (xi) Export of milk and milk products;
- (xii) Export performance made by one exporter on behalf of other exporter;
- (xiii) Supplies made to SEZ units;
- (xiv) Items, export of which requires an export authorisation (except SCOMET);
- (xv) Export of Meat and Meat Products;
- (xvi) Exports to Singapore, UAE and Hong Kong,
- (xvii) SEZ or EOU or EHTP or BTP or FTWZ products exported through DTA units;”.

**[F. No.605/10/2013-DBK]**

**(Sanjay Kumar)**  
**Under Secretary to the Government of India**

**Note-** The principal notification No. 6/2013-Service Tax, dated 18th April, 2013, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 254(E), dated 18th April, 2013.

## 12/2013 - Special Economic Zone (SEZ) Developer / Unit

### NOTIFICATION NO. 12/2013-ST.

**Dated: July 1, 2013**

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) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007 (22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 40/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 482 (E), dated the 20th June, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ ( hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.

2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:

*Provided* that where 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*, subject to the conditions and procedure as stated below .

3. This exemption shall be given effect to in the following manner:

- (I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

- (II) The *ab-initio* exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

- (a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

- (b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of

Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2 within fifteen working days from the date of submission of Form A-1<sup>442</sup>;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

<sup>443</sup>(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax, by 30<sup>th</sup> of the month following the particular quarter:

Provided that for the quarter of July, 2013 to September, 2013, the said statement shall be furnished by the 15<sup>th</sup> of December, 2013.

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

(III) The refund of service tax on (i) the specified services that are not exclusively used for authorised operation, or (ii) the specified services on which *ab-initio* exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely:-

(a) the service tax paid on the specified services that are common to the authorised operation in an SEZ and the operation in domestic tariff area [DTA unit(s)] shall be distributed amongst the SEZ Unit or the Developer and the DTA unit (s) in the manner as prescribed in rule 7 of the Cenvat Credit Rules. For the purpose of distribution, the turnover of the SEZ Unit or the Developer shall be taken as the turnover of authorised operation during the relevant period.

(b) the SEZ Unit or the Developer shall be entitled to refund of the service tax paid on (i) the specified services on which *ab-initio* exemption is admissible but not claimed, and (ii) the amount distributed to it in terms of clause (a).

(ba) the authorisation referred to in clause (b) shall be valid from the date of verification of Form A-1 by the Specified Officer of the SEZ:

Provided that if the Form A-1 is not submitted by the SEZ Unit or the Developer to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction,

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<sup>442</sup> Vide Not. No. 7/2014-ST dated 11 July 2014

<sup>443</sup> Amendment vide Not. No. 15/2013-ST dated 21.11.2013

as the case may be, within fifteen days of its verification by the Specified Officer of the SEZ, the authorisation shall be valid from the date on which it is submitted

- (c) the SEZ Unit or the Developer shall provide a copy of the said authorisation to the provider of specified services, where such provider is the person liable to pay service tax and on the basis of the said authorisation, the service provider may provide specified services to the SEZ Unit or the Developer without payment of service tax:

Provided that pending issuance of said authorisation, the provider of specified services may, on the basis of Form A-1, provide such specified services, without payment of service tax, and the SEZ Unit or the Developer shall provide a copy of authorisation to the service provider immediately on receipt of such authorisation:

Provided further that if the SEZ Unit or the Developer does not provide a copy of the said authorisation to the provider of specified services within a period of three months from the date when such specified services were deemed to have been provided in terms of the Point of Taxation Rules, 2011, the service provider shall pay service tax on specified services so provided in terms of the first proviso<sup>444</sup>

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- (d) the amount indicated in the invoice, bill or, as the case may be, challan, on the basis of which this refund is being claimed, including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon, or as the case may be, the amount of service tax payable under reverse charge shall have been paid under the provisions of the said Act;
- (e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

*Explanation.*— For the purposes of this notification, a service shall be treated as used exclusively for the authorised operations if the service is received by the SEZ Unit or the Developer under an invoice in the name of such Unit or the Developer and the service is used only for furtherance of authorised operations in the SEZ

- (f) the SEZ Unit or the Developer shall submit only one claim of refund under this notification for every quarter:

*Explanation.* - For the purposes of this notification "quarter" means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

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<sup>444</sup> Vide Not. No. 7/2014-ST dated 11 July 2014



- (g) the SEZ Unit or the Developer who is not so registered under the provisions referred to in clause (c), shall, before filing a claim for refund under this notification, make an application for registration under rule 4 of the Service Tax Rules, 1994.
- (h) if there are more than one SEZ Unit registered under a common service tax registration, a common refund may be filed at the option of the assessee.
- (IV) The SEZ Unit or Developer, who intends to avail exemption or refund under this notification, shall maintain proper account of receipt and use of the specified services, on which exemption or refund is claimed, for authorised operations in the SEZ.
4. Where any sum of service tax paid on specified services is erroneously refunded for any reason whatsoever, such service tax refunded shall be recoverable under the provisions of the said Act and the rules made there under, as if it is recovery of service tax erroneously refunded;
  5. Notwithstanding anything contained in this notification, SEZ Unit or the Developer shall have the option not to avail of this exemption and instead take CENVAT credit on the specified services in accordance with the *CENVAT Credit Rules, 2004*.
  6. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 (28 of 2005) or the rules made thereunder, or the said Act, or the rules made there under shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.
  7. This notification shall come into force on the date of its publication in the Gazette of India

**FORM A-1**  
**[Refer condition at S. No. 3 (II)(a)]**

**Declaration by the SEZ Unit or Developer for availing *ab initio* exemption under notification No.12/2013- Service Tax dated 1 st July, 2013**

1. Name of the SEZ Unit/Developer:
2. Addresses with telephone and Email:
3. Permanent Account Number (PAN) of the SEZ Unit/Developer:
4. Import and Export Code Number:
5. Jurisdictional Central Excise/Service Tax Division:
6. Service Tax registration number/Service Tax code/ Central Excise registration number:
7. Declaration: I/We hereby declare that-

(i) The information given in this application form is true, correct and complete in every respect and I am authorised to sign on behalf of the SEZ Unit/Developer;

(ii) I/We maintain proper account of specified services, as approved by the Approval Committee of SEZ, received and used for authorised operations in SEZ; I/we shall make available such accounts and related records, at all reasonable times, to the jurisdictional Central Excise officers for inspection or scrutiny.

(iii) I/We shall use/have used specified services for authorised operations in the SEZ.

(iv) I/We declare that we do not own or carry on any business other than the operations in SEZ [where this item is not applicable, declaration may be submitted after striking out the inapplicable portion];

**OR**

I/We declare that we also own/ carry on any business in domestic tariff area as per the details furnished below:

**Table I**

S. No.	Name of the unit owned in DTA	Output services provided by DTA Unit	Goods manufactured by the DTA unit

(v) I/We are aware that the declaration is valid only for the purpose specified in notification 12/2013-Service Tax dated 1st July, 2013 and is subject to fulfillment of conditions.

(vi) I/We intend to claim *ab initio* exemption on the specified services mentioned in the following Table:

**Table II**

Sl.No.	Specified service(s) to be received for the authorised operation	Details of service provider(s) who provide(s) the specified service(s), for SEZ authorised operations	
		Name and address	Service Tax Registration No. (Not applicable if specified service is covered under full reverse charge) <sup>445</sup>
(1)	(2)	(3)	(4)

(vii) I/We undertake that in case the services on which exemption has been claimed were not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, we shall pay to the government an amount that is claimed by way of exemption from service tax along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

<sup>445</sup> Vide Not. No. 7/2014-ST dated 11 July 2014

**Signature and name of authorised person with stamp**

Date:

Place:

**I have verified the above declaration; it is correct**

Signature, date and stamp of the Specified Officer of the SEZ Unit /Developer (Specified Officer shall retain a copy of the verified declaration, for the purpose of record)

**FORM A-2**  
**[Refer condition at S. No. 3 (II)(b)]**

**Authorisation for procurement of services by a SEZ Unit/Developer for authorised operations under notification No.12/2013- Service Tax dated 1 st July, 2013**

**A: Details of SEZ Unit/Developer:**

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with telephone and email:
3. Permanent Account Number (PAN) of the SEZ Unit/Developer:
4. Import and Export Code Number:
5. Jurisdictional Central Excise/Service Tax Division:
6. Service Tax registration number / Service Tax Code/Central Excise registration number:

**B: The details of specified services that the SEZ Unit/Developer is authorised to procure in terms of declaration furnished by the SEZ Unit/Developer**

Sl.No.	Specified service(s) to be received for the authorised operation	Details of service provider(s) who provide(s) the specified service(s), for SEZ authorised operations	
		Name and address	Service Tax Registration No. (Not applicable if specified service is covered under full reverse charge) <sup>446</sup>
(1)	(2)	(3)	(4)

<sup>446</sup> Vide Not. No. 7/2014-ST dated 11 July 2014

C: The authorisation is valid with effect from ..... [refer condition at S.No.3(II)(ba)]<sup>447</sup>

(Signature and the stamp of the jurisdictional Deputy Commissioner of Central Excise /Assistant Commissioner of Central Excise)

Phone No:

Fax No.:

**FORM A-3**  
**[Refer condition at S. No. 3 (II)(d)]**

**Quarterly return to be furnished by the SEZ Unit/Developer furnishing the details of services procured without payment of service tax in terms of the notification No. 12/2013-Service Tax dated 1st July, 2013**

**For the Quarter: April-June/Jul-Sep/Oct-Dec/Jan-March Year:**

***[Tick the appropriate quarter]***

1. Name of the SEZ Unit/Developer:
2. Address of the SEZ Unit/Developer with telephone and email:
3. Permanent Account Number (PAN) of the SEZ Unit/Developer:
4. Import and Export Code Number:
5. Jurisdictional Central Excise/Service Tax Division:
6. Service Tax Registration Number / Service Tax Code / Central Excise registration number:
7. We have procured the services as per the details below without payment of service tax in terms of notification No. 12/2013-Service Tax dated 1 st July, 2013

**TABLE**

<b>S. No.</b>	<b>Description of taxable service</b>	<b>Name and address of service provider</b>	Service Tax Registration No. (Not applicable if specified service is covered under full	<b>Invoice No.</b>	<b>Date</b>	<b>Value of service</b>	<b>Service tax + cess amount claimed as exemption</b>
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<sup>447</sup> Vide Not. No. 7/2014-ST dated 11 July 2014

			reverse charge) <sup>448</sup>				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

**Signature and name of authorised person with stamp**

Date:

Place:

**FORM A-4**  
**[Refer condition at S. No. 3 (III)(c)]**

**Application for claiming refund of service tax paid on specified services used for authorised operations in SEZ under notification No.12/2013- Service Tax dated 1st July, 2013**

**To**  
**The Assistant/Deputy Commissioner of Central Excise/Service Tax \_\_\_\_\_**  
**Division, \_\_\_\_\_ Commissionerate**

**Sir ,**

I /We having details as below,-

- (i) Name of the SEZ Unit/Developer:
- (ii) Address of the SEZ Unit/Developer with telephone and email:
- (iii) Address of the registered/Head Office with telephone and email:
- (iv) Permanent Account Number (PAN) of the SEZ Unit/Developer:
- (v) Import and Export Code Number:
- (vi) Jurisdictional Central Excise/Service Tax Division:
- (vii) Service Tax Registration Number/Service Tax Code / Central Excise registration number :
- (viii) Information regarding Bank Account (Bank, address of branch, account number) in which refund amount should be credited/to be deposited:
- (ix) Details regarding service tax refund claimed:

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<sup>448</sup> Vide Not. No. 7/2014-ST dated 11 July 2014

claim refund of Rs..... (Rupees in words) as per the details furnished in the Table I and Table II below for the period from\_\_\_\_\_ to\_\_\_\_\_.

**(A)** Refund of service tax in respect of service tax paid on specified services exclusively used for the authorised operations in SEZ, as approved by the Approval Committee of the \_\_\_\_\_ SEZ [ Rupees\_\_\_\_\_ ] as per the details below

**Table-I**

S. No.	Description of taxable service	Name and address of service provider	STC No. of service provider (Indicate "self" if reverse charge applies to the specified service)	Invoice* No.	Date	Value of service	Service tax +cesses paid
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Total amount claimed as refund							

**\*Certified copies of documents are enclosed.**

**(B)** Refund on respect of service tax paid on specified services other than the services used exclusively for authorised operation (used partially for the authorised operations of SEZ Unit/Developer), as approved by the Approval Committee of the \_\_\_\_\_ SEZ [Rupees\_\_\_\_\_].

**Table-II**

S. No.	Description of taxable service	Name and address of service provider	STC No. of service provider	Invoice* No.	Date	Value of service	Service tax +cess Amt	Amount distributed to the SEZ Unit/Developer out of the amount mentioned at column No. (8)	Document* under which amount mentioned at column (9) was distributed to the SEZ Unit/Developer	
								(Claimed as refund)	No.	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
<b>Total Amount</b>										

**\*Certified copies of documents are enclosed**

2. (i) The turnover of the authorised operation of the SEZ Unit/Developer in the previous financial year: \_\_\_\_\_;

(ii) Turnover of the DTA operations in the previous financial year: \_\_\_\_\_

3. I/We Declare that-

(i) information given in this application for refund is true, correct and complete in every respect and that I am authorised to sign this application for refund of service tax;

(ii) the specified services, as approved by the Approval Committee of SEZ, on which exemption/refund is claimed are actually used for the authorised operations in SEZ;

(iii) we have paid the service tax amount along with the cesses, being claimed as refund vide this application, to the service provider;

(iv) refund of service tax has not been claimed or received earlier, on the basis of above documents/information;

(v) we have not taken any *CENVAT credit* under the *CENVAT Credit Rules, 2004* of the amount being claimed as refund;

(vi) proper account of receipt and use of the specified services on which exemption/refund is claimed, for the authorised operations in the SEZ, is maintained and the same shall be produced to the officer sanctioning refund, on demand.

**Signature and name (of proprietor/managing partner/person authorised by managing director of the SEZ Unit/Developer) with complete address, telephone and e-mail.**

**Date: Place:**

**[F.No. B1/6/ 2013-TRU]**

**(Akshay Joshi)**  
**Under Secretary to the Government of India**

**13/2013 – Amendment to Not. 25/2012**

**Notification No.13/2013 - Service Tax**

New Delhi, 10<sup>th</sup> September, 2013

G.S.R....(E).\_ In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* G.S.R. 467 (E), dated the 20th June, 2012, namely:-

In the said notification, in the opening paragraph, after entry 9, the following entry shall be inserted namely:-

“9A. Any services provided by, \_

- (i) the National Skill Development Corporation set up by the Government of India;
- (ii) a Sector Skill Council approved by the National Skill Development Corporation;
- (iii) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
- (iv) a training partner approved by the National Skill Development Corporation or the Sector Skill Council

in relation to (a) the National Skill Development Programme implemented by the National Skill Development Corporation; or (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (c) any other Scheme implemented by the National Skill Development Corporation.”

[F.No. 356 /17/ 2012-TRU]

(Raj Kumar Digvijay)  
Under Secretary to the Government of India

Note.- The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 25/2012 - Service Tax, dated 20th June, 2012, *vide* G.S.R. 467 (E), dated the 20th June, 2012 and was last amended by notification No.3/2013- Service Tax, dated the 1st March, 2013 *vide* G.S.R. 153(E), dated the 1st March, 2013.



**1/1/2013 - AD-HOC EXEMPTION**

**AD-HOC EXEMPTION ORDER NO.1/1/2013**

New Delhi, 17<sup>th</sup> September, 2013

Whereas the recent floods and landslides has caused extensive damage in the State of Uttarakhand and has adversely affected the life of the common man in the state. There is a need to provide support to ensure sustenance for the local population by revival of the hospitality industry;

And whereas taxable services provided in the State of Uttarakhand are chargeable to service tax;

Now therefore, in exercise of the powers conferred by sub-section (2) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do and that there are circumstances of exceptional nature as mentioned above, hereby exempts the following taxable service provided to any person in the State of Uttarakhand, from the whole of service tax leviable thereon under section 66B of the Finance Act, 1994 (32 of 1994), namely:-

- i. Services by way of renting of a room in a hotel, inn, guest house, club, campsite or other commercial place meant for residential or lodging purposes;
- ii. Services provided in relation to serving of food or beverages by a restaurant, eating joint or mess

This exemption order is applicable for the above mentioned taxable services provided during the period 17<sup>th</sup> September, 2013 to 31<sup>st</sup> March, 2014.

(Raj Kumar Digvijay)  
Under Secretary to the Government of India

## 12/2013 (CE) – Amendment in 3 (5A) of CCR

### Notification No. 12 /2013-CE (NT)

New Delhi, the 27<sup>th</sup> September, 2013

G.S.R. (E).- In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:-

1. (1) These rules may be called the CENVAT Credit (Second Amendment) Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 3 of the CENVAT Credit Rules, 2004, for sub-rule (5A), the following sub-rule shall be substituted-

“ (5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-

(i) for computers and computer peripherals:

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

**Provided** that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

**(b)** If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.”

F. No. 267/42/2012-CX.8

(Vikas Kumar)  
Director to the Government of India

Note.- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub section (i), dated the 10<sup>th</sup> September, 2004, vide Notification No. 23/2004 – Central Excise (N.T.) dated the 10<sup>th</sup> September, 2004, vide number G.S.R. 600(E), dated the 10<sup>th</sup> September, 2004 and last amended vide Notification No. 3/2013-Central Excise (N.T.) dated the 1<sup>st</sup> March, 2013 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 150(E), dated the 1<sup>st</sup> March, 2013.

## **14/2013 – Catering in canteen**

New Delhi, 22<sup>nd</sup> October, 2013

G.S.R.\_\_\_\_\_ (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2012-Service Tax, dated the 20<sup>th</sup> June, 2012, namely:-

In the said notification, in the opening paragraph, after entry 19, the following entry shall be inserted, namely:-

“19A. Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year.”.

[F. No. B1/13/2013-TRU]

(Akshay Joshi)

Under Secretary to the Government of India

Note.- The principal notification was published in the Gazette of India, *vide* notification No.25/2012-Service Tax, dated the 20<sup>th</sup> June, 2012, *vide* G.S.R.467(E), dated the 20<sup>th</sup> June, 2012 and was last amended by notification No.13/2013-Service Tax, dated the 10<sup>th</sup> September, 2013 *vide* G.S.R.616(E), dated the 10<sup>th</sup> September, 2013.

## **15/ 2013- Amendment in SEZ Not.**

New Delhi, the 21<sup>st</sup> November, 2013

G.S.R.....(E).-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) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007 (22 of 2007), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2013-Service Tax, dated the 1<sup>st</sup> July, 2013, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 448 (E), dated the 1<sup>st</sup> July, 2013, namely:-

In the said notification, in para 3, in sub para (II), for clause (d), the following clause shall be substituted, namely:-

“(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax, by 30<sup>th</sup> of the month following the particular quarter:

Provided that for the quarter of July, 2013 to September, 2013, the said statement shall be furnished by the 15<sup>th</sup> of December, 2013.”.

[F.No. B1/6/ 2013-TRU]

(Akshay Joshi)  
Under Secretary to the Government of India

*Note.- The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 12/2013 - Service Tax, dated the 1<sup>st</sup> July, 2013, vide number G.S.R. 448 (E), dated the 1<sup>st</sup> July, 2013.*

## **16 /2013- E-payment (1 lac)**

New Delhi, the 22nd November, 2013  
1 Agrahayana, 1935 Saka

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

1. (1) These rules may be called the Service Tax Third (Amendment) Rules, 2013.  
(2) They shall come into force on the 1<sup>st</sup> day of January, 2014.
2. In the Service Tax Rules, 1994, in rule 6, in sub-rule (2), in the proviso, for the words " rupees ten lakh" , the words " rupees one lakh" shall be substituted.

F.No: 137/116/2012- Service Tax

(Rajeev Yadav)  
Director

*Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-Service Tax, dated the 28<sup>th</sup> June, 1994 vide number G.S.R 546(E), dated the 28<sup>th</sup> June, 1994 and was last amended by notification No 5/2013- Service Tax, dated the 10<sup>th</sup> April, 2013, vide GSR 236 (E) dated the 22<sup>nd</sup> February, 2013.*

**17/2013-Amendment to FMS Not.**

New Delhi, dated the 26<sup>th</sup> December, 2013.

G.S.R. 792 (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 6/2013-Service Tax, dated the 18<sup>th</sup> April, 2013 published in the Gazette of India, Extraordinary Part-II, Section 3, subsection(i), vide number G.S.R. 254 (E), dated 18<sup>th</sup> April, 2013, namely:-

In the said notification, in paragraph 3, in condition (a),-

(a) in the first proviso, after serial number (xv) and the entry relating thereto, the following serial numbers and entries shall be inserted, namely,-

“(xvi) Export of Meat and Meat Products;  
(xvii) Export of Cotton;  
(xviii) Export of Cotton Yarn;  
(xix) Export which are subject to Minimum Export Price or Export Duty:”;

(b) in the second proviso, after serial number (xvii) and the entry relating thereto, the following serial numbers and entries shall be inserted, namely,-

“(xviii) Cotton (for the paragraph 3.14.5 of the Foreign Trade Policy);  
(xix) Cotton Yarn (for the paragraph 3.14.5 of the Foreign Trade Policy);  
(xx) Export which are subject to Minimum Export Price or Export Duty (for the paragraph 3.14.5 of the Foreign Trade Policy);”.

[F.No. 605/10/2013-DBK]

(Sanjay Kumar)  
Under Secretary to the Government of India

*Note: The Principal notification number 6/2013-Service Tax, dated 18<sup>th</sup> April, 2013 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 254(E), dated the 18<sup>th</sup> April, 2013 and was last amended by notification no. 11/2013 -Service Tax dated the 13<sup>th</sup> June, 2013 vide number G.S.R. 373 (E), dated the 13<sup>th</sup> June, 2013.*

**01/2014 – Amendment in Mega Not.**

New Delhi, 10<sup>th</sup> January, 2014

G.S.R....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide*G.S.R. 467 (E), dated the 20th June, 2012, namely:-

In the said notification, in the opening paragraph, in entry 11, in item (a), for the words “district, State or zone”, the words“district, State, zone or Country” shall be substituted.

[F.No. 354 /21/ 2013-TRU]

(Raj Kumar Digvijay)

Under Secretary to the Government of India

Note.- The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 25/2012 - Service Tax, dated 20th June, 2012, *vide*G.S.R. 467 (E), dated the 20th June, 2012 and was last amended by notification No.14/2013- Service Tax, dated the 22<sup>nd</sup> October, 2013 *vide* G.S.R. 699(E), dated the 22<sup>nd</sup> October, 2013.

## 02/2014 – ST – Governmental Authority definition

New Delhi, 30<sup>th</sup> January, 2014

G.S.R....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* G.S.R. 467 (E), dated the 20th June, 2012, namely:-

In the said notification, in the paragraph 2, for clause (s), the following shall be substituted, namely:-

'(s) "governmental authority" means an authority or a board or any other body;  
(i) set up by an Act of Parliament or a State Legislature; or  
(ii) established by Government,  
with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;'

[F.No. 354 /236/ 2013-TRU]

(Raj Kumar Digvijay)  
Under Secretary to the Government of India

*Note.- The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 25/2012 - Service Tax, dated 20th June, 2012, number G.S.R. 467 (E), dated the 20th June, 2012 and was last amended by notification No.01/2014- Service Tax, dated the 10<sup>th</sup> January, 2014 G.S.R. 15(E), dated the 10<sup>th</sup> January,2014.*



### 03/2014-ST – Forward contract sub-broker exemption

New Delhi, 3<sup>rd</sup> February, 2014

G.S.R....(E).- Whereas, the Central Government is satisfied that a practice was generally prevalent regarding levy of service tax (including non-levy thereof), under section 66 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as 'the Finance Act'), on services provided by an **authorised person or sub-broker** to the member of a recognised association or a registered association, in relation to a **forward contract**, and that such services were liable to service tax under the Finance Act, which was not being levied according to the said practice during the period commencing from the 10<sup>th</sup> day of September 2004 and ending with the **30<sup>th</sup> day of June 2012**;

Now, therefore, in exercise of the powers conferred by **section 11C** of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the Finance Act, the Central Government hereby directs that the service tax payable on the services provided by an authorised person or sub-broker to the member of a recognised association or a registered association, in relation to a forward contract, shall not be required to be paid in respect of such taxable service on which the service tax was not being levied during the aforesaid period in accordance with the said practice.

[F. No. 354/131/2013 – TRU]

(Raj Kumar Digvijay)

Under Secretary to the Government of India

**04/2014 – ST – Rice and cord blood bank exemption**

New Delhi, the 17<sup>th</sup> February, 2014

G.S.R....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* G.S.R. 467 (E), dated the 20th June, 2012, namely:-

In the said notification, in the opening paragraph,-

(i) after entry 2, the following entry shall be inserted, namely:-

“2A. Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation;”;

(ii) after entry 39, the following entry shall be inserted, namely:-

“40. Services by way of loading, unloading, packing, storage or warehousing of rice.”.

[F.No. 334 /3/ 2014-TRU]

(Akshay Joshi)

Under Secretary to the Government of India

*Note.- The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 25/2012 - Service Tax, dated the 20th June, 2012, number G.S.R. 467 (E), dated the 20th June, 2012 and was last amended by notification No.02/2014 - Service Tax, dated the 30<sup>th</sup> January, 2014 vide number G.S.R. 71(E), dated the 30<sup>th</sup> January,2014.*

**05/2014-ST – FMS Amendment**

New Delhi, the 24<sup>th</sup> February, 2014.

G.S.R. 107 (E).– In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 6/2013-Service Tax, dated the 18<sup>th</sup> April, 2013 published in the Gazette of India, Extraordinary Part-II, Section 3, sub-section(i), *vide* number G.S.R. 254 (E), dated 18<sup>th</sup> April, 2013, namely:-

In the said notification, in paragraph 3, in condition (a), in the second proviso, serial number (xix) and the entries relating thereto shall be deleted.

[F.No. 605/10/2013-DBK]

(Sanjay Kumar)

Under Secretary to the Government of India

Note: The principal notification number 6/2013-Service Tax, dated the 18<sup>th</sup> April, 2013 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 254(E), dated the 18<sup>th</sup> April, 2013 and was last amended by notification no. 17/2013 –Service Tax, dated the 26<sup>th</sup> December, 2013 *vide* number G.S.R. 792 (E), dated the 26<sup>th</sup> December, 2013.

**18/2013-C.E. (N.T.)<sup>449</sup> –Rescinded later**  
**Dated 31-12-2013**

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Cenvat Credit Rules, 2004, namely :-

1. (1) These rules may be called the CENVAT Credit (Third Amendment) Rules, 2013.  
(2) They shall come into force with effect from the 1st day of March, 2014.
  
2. In the Cenvat Credit Rules, 2004,-
  - (a) in rule 2, in clause (ij),-
    - (i) the words "a dealer, who purchases the goods directly from" shall be omitted;
    - (ii) in sub-clause (i), for the words, "the manufacturer under the cover of an invoice" the words "a dealer, who purchases the goods directly from the manufacturer under the cover of an invoice" shall be substituted;
    - (iii) for sub-clause (ii), the following sub-clause shall be substituted, namely :-

"(ii) an importer who sells goods imported by him under the cover of an invoice on which CENVAT credit may be taken and such invoice shall include an invoice issued from his depot or the premises of his consignment agent";
  - (b) in rule 9, in sub-rule (1), in clause (a), sub-clauses (ii) and (iii) shall be omitted.

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<sup>449</sup> Rescinded vide Not. 7/2014-CE (NT)

**01/2014-CE (NT) – CENVAT Credit amendment**

New Delhi, the 8th January, 2014  
18, Pausha, 1935 Saka

G.S.R. (E).- In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:-

1. (1) These rules may be called the CENVAT Credit (First Amendment) Rules, 2014.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 3 of the CENVAT Credit Rules, 2004, -

(i) the Explanation occurring after the proviso to sub-rule (5B) shall be omitted;

(ii) in sub-rule (5C), after the words “production of said goods”, the words “and the CENVAT credit taken on input services used in or in relation to the manufacture or production of said goods” shall be inserted;

(iii) after sub-rule (5C), the following explanations shall be inserted, namely: -

“Explanation 1.- The amount payable under sub-rules (5), (5A), (5B) and (5C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, where such payment shall be made on or before the 31st day of the month of March.

Explanation 2.- If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), (5B) and (5C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken and utilised.”

F. No. 267/126/2011-CX.8

(Pankaj Jain)

Under Secretary to the Government of India

*Note.- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 10th September, 2004, vide Notification No. 23/2004 – Central Excise (N.T.) dated the 10th September, 2004, vide number G.S.R. 600(E), dated the 10th September, 2004 and last amended vide Notification No. 18/2013-Central Excise (N.T.) dated the 31st December, 2013 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 808 (E), dated the 31st December, 2013.*

## **02/2014-CE(N.T.) – Amends Rule 12**

**Dated: January 20, 2014**

**G.S.R. (E).**- In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:-

1. (1) These rules may be called the CENVAT Credit (Second Amendment) Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 12 of the CENVAT Credit Rules, 2004, after the brackets, letters, figures and words, "[GSR 307(E), dated the 25th April, 2007]" the words, figures, letters and brackets, "or No.1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010]" shall be inserted.

**[F.No.332/09/2013-TRU]**

**(Raj Kumar Digvijay)**

**Under Secretary to the Government of India**

**Note.-** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 10th September, 2004, vide notification No. **23/2004**-Central Excise (N.T.) dated the 10th September, 2004, vide number G.S.R. 600(E), dated the 10th September, 2004 and last amended vide notification No. **1/2014**-Central Excise (N.T.) dated the 8th January, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 6 (E), dated the 8th January, 2014.

**05/2014 – CE (NT) – Rule 7 (ISD Amendment)**

New Delhi, the 24<sup>th</sup> February, 2014

G.S.R....(E).- In exercise of the powers conferred by section 37 of the Central Excise Act,1944 (1 of 1944) and section 94 of the Finance Act,1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules,2004, namely:-

1. (1) These rules may be called the CENVAT Credit (Third Amendment) Rules, 2014.

(2) They shall come into force on the 1<sup>st</sup> day of April, 2014.

2. In rule 7 of the CENVAT Credit Rules, 2004, -

(i) in clause (b) for the words, “used in a unit”, the words “used by one or more units” shall be substituted;

(ii) in clause (c) for the words, “used wholly in a unit”, the words “used wholly by a unit” shall be substituted;

(iii) for clause (d), the following clause shall be substituted, namely:-

“(d) credit of service tax attributable to service used by more than one unit shall be distributed *pro rata* on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period.”;

(iv) for *Explanation 3*, the following shall be substituted, namely:-

“*Explanation 3*.- For the purposes of this rule, the ‘relevant period’ shall be,-

(a) If the assessee has turnover in the ‘financial year’ preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year; or

(b) If the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed.”.

[F.No. 354 /246/ 2013-TRU]

(Akshay Joshi)

Under Secretary to the Government of India

**07/2014 – CE (NT) – Rescinds 18/2013**

New Delhi, the 26<sup>th</sup> February, 2014  
7, Phalguna, Saka, 1935

G.S.R. (E). - In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby rescinds the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 18/2013-Central Excise (NT) dated the 31<sup>st</sup> December, 2013, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 808 (E), dated the 31<sup>st</sup> December, 2013.

F. No. 267/07/2014-CX.8

(Pankaj Jain)  
Under Secretary to the Government of India



## **09/2014-CE(N.T.) – CCR Amendment**

**Dated : February 28, 2014**

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely : -

1. (1) These rules may be called the CENVAT Credit (Fourth Amendment) Rules, 2014.

(2) They shall come into force from the 1st day of April, 2014.

2. In the CENVAT Credit Rules, 2004, in rule 9, in sub-rule (8), -

(a) after the words "second stage dealer", the words "or a registered importer" shall be inserted;

(b) in the proviso, after the words "second stage dealer", the words "or registered importer" shall be inserted.

**F. No. 267/07/2014-CX.8**

**(Pankaj Jain)**  
**Under Secretary to the Government of India**

**Note.-** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 10th September, 2004, vide Notification No. **23/2004** - Central Excise (N.T.) dated the 10th September, 2004, vide number G.S.R. 600(E), dated the 10th September, 2004 and last amended vide Notification No. **05/2014** - Central Excise (N.T.) dated the 24th February, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 108 (E), dated the 24th February, 2014

## 11/2014-CE (N.T.) – Quarterly Return

**Dated : February 28, 2014**

In exercise of the powers conferred by sub-rule (8) of rule 9 of the CENVAT Credit Rules, 2004, and in supersession of the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 73/2003-Central Excise (NT), dated the 15th September, 2003, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i) vide number G.S.R. 746(E), dated the 15th September, 2003 except as respects things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby specifies the following return Form for the purposes of the said rule, namely: –

Quarterly return Form  
(for first stage/ second stage dealer or the registered importer)

[See sub-rule (8) of rule 9]

Return for the quarter ending .....

1. Name of the first stage dealer/ second stage dealer/ registered importer:
2. Excise registration number :
3. Address :
4. Particulars of invoices issued by the first stage dealer/ second stage dealer/ registered importer:

S. No.	Invoice No. with date	For the main item in the document*			
		Description of the goods	Central Excise Tariff Heading	Quantity	Quantity Amount of duty involved (Rs.)

5. Particulars of the documents based on which the credit is passed on :

S. No.	Invoice/Bill of entry No. with date	Name and address of the manufacturer/ importer or first stage dealer (as the case may be) #	For the main item in the document*		
			Description	Central Excise	Amount of duty

			of the goods	Tariff Heading	involved (Rs.)

\*Give details with respect to the item with maximum duty covered by the document.

# A registered importer may indicate 'Self' in this column.

Place:

Date :

Signature of the registered person  
or the authorized signatory

Name in capital letters

Designation

Seal of the registered dealer/importer.

2. This Notification shall come into force with effect from the 1st day of April, 2014.

**F. No. 267/07/2014-CX.8**

**(Pankaj Jain)**  
**Under Secretary to the Government of India**

## 12/2014-CE (NT)- Refund for Partial RCM service providers

Dated : March 03, 2014

In exercise of the powers conferred by rule 5B of the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), the Central Board of Excise and Customs hereby directs that the refund of CENVAT credit shall be allowed to a provider of services notified under sub-section (2) of section 68 of the Finance Act, 1994, subject to the procedures, safeguards, conditions and limitations, as specified below, namely:-

### 1. Safeguards, conditions and limitations. -

(a) the refund shall be claimed of unutilised CENVAT credit taken on inputs and input services during the half year for which refund is claimed, for providing following output services namely:-

(i) renting of a motor vehicle designed to carry passengers on non abated value, to any person who is not engaged in a similar business;

(ii) supply of manpower for any purpose or security services; or

(iii) service portion in the execution of a works contract;

(hereinafter the above mentioned services will be termed as partial reverse charge services).

Explanation:- For the purpose of this notification,-

Unutilised CENVAT credit taken on inputs and input services during the half year for providing partial reverse charge services = (A) - (B)

Where,

A = CENVAT credit taken on inputs and input services during the half year	(*) $\frac{\text{turnover of output service under partial reverse charge during the half year}}{\text{total turnover of goods and services during the half year}}$
B = Service tax paid by the service provider for such partial reverse charge services during the half year;	

(b) the refund of unutilised CENVAT credit shall not exceed an amount of service tax liability paid or payable by the recipient of service with respect to the partial reverse charge services provided during the period of half year for which refund is claimed;

(c) the amount claimed as refund shall be debited by the claimant from his CENVAT credit account at the time of making the claim;

(d) in case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and the amount sanctioned;

(e) the claimant shall submit not more than one claim of refund under this notification for every half year;

(f) the refund claim shall be filed after filing of service tax return as prescribed under rule 7 of the Service Tax Rules for the period for which refund is claimed;

(g) no refund shall be admissible for the CENVAT credit taken on input or input services received prior to the 1st day of July,2012;

Explanation. – For the purposes of this notification, half year means a period of six consecutive months with the first half year beginning from the 1st day of April every year and second half year from the 1st day of October of every year.

**2. Procedure for filing the refund claim.** – (a) the provider of output service, shall submit an application in Form A annexed hereto, along with the documents and enclosures specified therein, to the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, before the expiry of one year from the due date of filing of return for the half year:

Provided that the last date of filing of application in Form A, for the period starting from the 1st day of July,2012 to the 30th day of September,2012, shall be the 30th day of June,2014;

(b) if more than one return is required to be filed for the half year, then the time limit of one year shall be calculated from the due date of filing of the return for the later period;

(c) the applicant shall file the refund claim along with copies of the return (s) filed for the half year for which the refund is claimed;

(d) the Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of refund claim;

(e) at the time of sanctioning the refund claim, the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the refund claim and that the refund claim is complete in every respect;

**Annexure**

**FORM A**

Application for refund of CENVAT Credit under rule 5B of the CENVAT Credit Rules, 2004 for the half year beginning from 1st of April/1st of October

To,

The Assistant Commissioner or Deputy Commissioner of Central Excise,

.....

Sir,

I/We have provided taxable services where service recipient is also liable to pay service tax in terms of sub-section (2) of section 68 of the Finance Act, 1994. Accordingly the refund of CENVAT Credit in terms of Rule 5B of the CENVAT Credit Rules, 2004 (as per the details below) may be sanctioned.

(a) Particulars of output services provided and service tax liability of the service provider and the service recipient during the period of half year for which refund is claimed:-

Sl.No	Description of service	Value of output services provided during the half year	Total Service tax liability during the half year	Service tax liability discharged by the provider of output service during the half year	Service tax liability of the receiver of such output service during the half-year [Column 3 – Column 4]
	1	2	3	4	5
1	renting of a motor vehicle designed to carry passengers on non abated value, to any person who is not engaged in a similar business				
2	supply of manpower for any purpose or security services				
3	service portion in the execution of a works contract				
Total					

(b) Particulars of the amount eligible for refund at the end of the half year:-

Period beginning from 1st April/1st October	Service tax liability of the receiver of such output service during the half-year (total of	Amount of unutilised CENVAT Credit taken on inputs or input services during the half year for providing services taxable under partial reverse charge [as	The eligible refund amount (minimum of column 2 and 3)

	column 5 of above table)	calculated in para 1(a) of the notification].	
1	2	3	4

(c), I/we have debited the CENVAT credit account by Rs. .... for seeking refund.

2. Details of the Bank Account to which the refund amount to be credited: Refund sanctioned in my favour should be credited in my/ our bank account.

Details furnished below;

(i) Account Number :

(ii) Name of the Bank :

(iii) Branch (with address):

(iv) IFSC Code:

3. Declaration

(i) I/We certify that the aforesaid particulars are correct.

(ii) I/We certify that we satisfy all the conditions that are contained in rule 5B of the CENVAT Credit Rules, 2004 and in Notification No. 12/2014-CE (NT), dated 3rd March,2014.

(iii) I/We am/are the rightful claimant(s) of the refund of CENVAT Credit in terms of rule 5B, the same may be allowed in our favour.

(iv) I/we have been authorised as the person to file the refund claim on behalf of the assessee.

(v) I/We declare that we have not filed or will not file any other claim for refund under rule 5B of CENVAT Credit Rules, 2004, for the same half year to which this claim relates.

Date	dd mm yyyy	Signature of the Claimant (proprietor/karta/partner/any other authorised person)	.....
		Name of the Claimant Registration Number Address of the Claimant	..... ..... .....

4. Enclosures:

(i) Copy of the ST-3 returns for the half year.

5. Refund Order No.

Date                    d            d            m            m            y            y            y            y

The refund claim filed by Shri/Messrs \_\_\_\_\_ has been scrutinized with the relevant Central Excise/ Service Tax records. The said refund claim has been examined with respect to relevant enclosures and has/has not been found in order. A refund of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) is sanctioned/The refund claim filed is rejected.

Assistant Commissioner or Deputy Commissioner of Central Excise

Forwarded to-

- (i) The Chief Accounts officer, Central Excise, for information and necessary action.
- (ii) The Commissioner of Central Excise.

Assistant Commissioner or Deputy Commissioner of Central Excise

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(i) Passed for payment of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) The amount is adjustable under head "0044 - Service tax - Deduct Refunds".

(ii) Amount credited to the account of the claimant as per the details below :

Amount refunded	
Account Number	
Reference No. of transfer	
Name of the Bank	
Address of the Branch	
IFSC code	

Date                    d            d            m            m            y            y            y            y

Chief Accounts officer

**[F.No. 354 /247/ 2012-TRU]**

**(Akshay Joshi)**  
**Under Secretary to the Government of India**



**13/2014-CE (N.T.) – Rescinds Not. No. 6/2012CE (NT)**

**Dated : March 21, 2014**

In pursuance of rule 12CCC of the Central Excise Rules, 2002, and rule 12AAA of the CENVAT Credit Rules, 2004, the Central Board of Excise and Customs hereby rescinds the notification No. 6/2012- Central Excise (N.T.) dated the 13 th March, 2012 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 142 (E) dated the 13 th March, 2012, except as respects things done or omitted to be done before such rescission.

**F. No. 267/13/2013-CX.8**

**15/2014 - CE(N.T.) – 12AAA introduced**

**Dated: March 21, 2014**

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:-

1. (1) These rules may be called the CENVAT Credit (Fifth Amendment) Rules, 2014.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. (1) For rule 12AAA of the CENVAT Credit Rules, 2004, the following shall be substituted, namely:-

*"12AAA. Power to impose restrictions in certain types of cases.- Notwithstanding anything contained in these rules, where the Central Government, having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and such other factors as may be relevant, is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit as specified in these rules, it is necessary in the public interest to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter, may by notification in the Official Gazette, specify the nature of restrictions including restrictions on utilization of CENVAT credit and suspension of registration in case of a dealer and type of facilities to be withdrawn and procedure for issue of such order by the Chief Commissioner of Central Excise.*

*Explanation.- For the purposes of this rule, it is hereby clarified that every proposal initiated in terms of the procedure specified under notification no.05/2012-CE (N.T.) dated the 12th March, 2012 published in the Gazette of India, Part II, Section 3, Sub-section (i) vide number G.S.R. 140(E), dated the 12th March, 2012, which is pending, shall be treated as initiated in terms of the procedure specified under this rule and shall be decided accordingly."*

**F. No. 267/13/2013-CX.8**

**(Pankaj Jain)**  
**Under Secretary to the Government of India**

**Note.-** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 10th September, 2004, vide Notification No.23/2004 – Central Excise (N.T.) dated the 10th September, 2004, vide number G.S.R. 600(E), dated the 10th September, 2004 and last amended vide Notification No. 09/2014-Central Excise (N.T.) dated the 28th February, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 135 (E), dated the 1st March, 2014.

**06/2014-ST – Mega Not. amended**

**Dated : July 11, 2014**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20th June, 2012, namely:-

(1) In the said notification, in the opening paragraph,-

(i) after entry 2A, the following entry shall be inserted, namely:-

***"2B. Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto;"***

(ii) entry 7 shall be omitted;

(iii) for entry 9, the following entry shall be substituted, namely:-

***"9. Services provided,-***

***(a) by an educational institution to its students, faculty and staff;***

***(b) to an educational institution, by way of,-***

***(i) transportation of students, faculty and staff;***

***(ii) catering, including any mid-day meals scheme sponsored by the Government;***

***(iii) security or cleaning or house-keeping services performed in such educational institution;***

***(iv) services relating to admission to, or conduct of examination by, such institution;"***;

(iv) for entry 18, the following entry shall be substituted, namely:-

***"18. Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent;"***;

(v) in entry 20, for item (j), the following items shall be substituted, namely:-

***"(j) chemical fertilizer, organic manure and oil cakes;***

***(k) cotton, ginned or baled."***;

(vi) in entry 21,-

(a) for item (e), the following item shall be substituted namely:-

***"(e) chemical fertilizer, organic manure and oil cakes;"***;

(b) after item (h), the following item shall be inserted, namely:-

***"(i) cotton, ginned or baled."***;

(vii) in entry 23, for item (b), the following item shall be substituted, namely:-

***"(b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or"***;

(viii) in entry 25, for item (a) , the following item shall be substituted, namely:-

***"(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or"***;

(ix) in entry 26A, after item (b), the following item shall be inserted, namely:-

***"(c) life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees.";***

(x) for the entry 40, the following entries shall be substituted, namely:-

***"40. Services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled;***

***41. Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves;***

***42. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.".***

(2) In the said notification, in paragraph 2 relating to definitions,-

(a) clause (f) shall be omitted;

(b) after clause (o), the following clause shall be inserted, namely:-

***'(oa) "educational institution" means an institution providing services specified in clause (1) of section 66D of the Finance Act,1994 (32 of 1994);'***

(c) after clause (x), the following clause shall be inserted, namely:-

***'(xa) "life micro-insurance product" shall have the meaning assigned to it in clause (e) of regulation 2 of the Insurance Regulatory and Development Authority (Micro-insurance) Regulations, 2005;'***

(d) for clause (za), the following clauses shall be substituted, namely:-

***'(za) "radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);'***

***(zaa) "recognised 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 affiliated 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;'***

**[F. No.334/15/2014 -TRU]**

**(Akshay Joshi)**

**Under Secretary to the Government of India**

**Note:-**The principal notification was published in the Gazette of India, Extraordinary, by notification No. 25/2012 - Service Tax, dated the 20th June, 2012, **vide** number G.S.R. 467 (E), dated the 20th June, 2012 and last amended by notification No.04/2014 - Service Tax, dated the 17th February, 2014 vide number G.S.R. 91(E), dated the 17th February, 2014.

## **07/2014-ST – SEZ refund simplified**

**Dated : July 11, 2014**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), read with sub-section (3) of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section (3) of section 140 of the Finance Act, 2007 (22 of 2007), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.12/2013-Service Tax, dated the 1st July,2013, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 448 (E), dated the 1st July, 2013, namely:-

In the said notification,-

(i) in paragraph 3, in sub-paragraph (II),-

(A) in clause (b), after the words, letter and figure "in Form A-2", the words, letter and figure "within fifteen working days from the date of submission of Form A-1" shall be inserted;

(B) after clause (b), the following clause shall be inserted, namely:-

***"(ba) the authorisation referred to in clause (b) shall be valid from the date of verification of Form A-1 by the Specified Officer of the SEZ:***

***Provided that if the Form A-1 is not submitted by the SEZ Unit or the Developer to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction, as the case may be, within fifteen days of its verification by the Specified Officer of the SEZ, the authorisation shall be valid from the date on which it is submitted;"***

(C) for clause (c), the following clause shall be substituted, namely:-

***"(c) the SEZ Unit or the Developer shall provide a copy of the said authorisation to the provider of specified services, where such provider is the person liable to pay service tax and on the basis of the said***

**authorisation, the service provider may provide specified services to the SEZ Unit or the Developer without payment of service tax:**

**Provided that pending issuance of said authorisation, the provider of specified services may, on the basis of Form A-1, provide such specified services, without payment of service tax, and the SEZ Unit or the Developer shall provide a copy of authorisation to the service provider immediately on receipt of such authorisation:**

**Provided further that if the SEZ Unit or the Developer does not provide a copy of the said authorisation to the provider of specified services within a period of three months from the date when such specified services were deemed to have been provided in terms of the Point of Taxation Rules, 2011, the service provider shall pay service tax on specified services so provided in terms of the first proviso.";**

(D) in clause (e), the following Explanation shall be inserted, namely:-

**"Explanation.- For the purposes of this notification, a service shall be treated as used exclusively for the authorised operations if the service is received by the SEZ Unit or the Developer under an invoice in the name of such Unit or the Developer and the service is used only for furtherance of authorised operations in the SEZ.";**

(ii) in Form A-1, in Table II, for sub-heading of column(4), the following shall be substituted, namely:-

**"Service Tax Registration No. (Not applicable if specified service is covered under full reverse charge)";**

(iii) in Form A-2,-

(a) in item B, in the Table, for sub-heading of column(4), the following sub-heading shall be substituted, namely:-

**"Service Tax Registration No. (Not applicable if specified service is covered under full reverse charge)";**



(b) after item B, the following item shall be inserted, namely:-

***"C: The authorisation is valid with effect from .....***

***[refer condition at S.No.3(II)(ba)]";***

(iv) in Form A-3, in the TABLE, for column heading of column (4), the following column heading shall be substituted namely:-

***"Service Tax Registration No. (Not applicable if specified service is covered under full reverse charge)".***

**[F.No. 334/15/ 2014-TRU]**

**(Akshay Joshi)**

**Under Secretary to the Government of India**

**Note:-**The principal notification was published in the Gazette of India, Extraordinary, by notification No. 12/2013 - Service Tax, dated the 1st July, 2013, *vide* number G.S.R. 448 (E), dated the 1st July, 2013 and last amended by notification No. 15/2013-Service Tax, dated the 21st November, 2013 *vide* number G.S.R. No.744 (E), dated the 21st November, 2013.

## **08/2014-ST – Abatement amended**

**Dated : July 11, 2014**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 468 (E), dated the 20th June, 2012, namely:-

1. In the said notification, in the TABLE,-

(i) against serial number 7, in column (4), after the words "has not been taken", the words "by the service provider" shall be inserted;

(ii) in serial number 8, for the entry in column (4), the following entry shall be substituted, namely:-

*"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.";*

(iii) in serial number 9,-

(a) in column (2), for the words "any motor vehicle designed to carry passengers", the words "motorcab" shall be substituted with effect from the 1st day of October, 2014;

(b) for the entry in column (4), the following entry shall be substituted with effect from the 1st day of October, 2014, namely:-

*"(i) 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;*

*(ii) CENVAT credit on input service of renting of motorcab has been taken under the provisions of the CENVAT Credit Rules, 2004, in the following manner:*

(a) Full CENVAT credit of such input service received from a person who is paying service tax on forty percent of the value; or

(b) Up to forty percent CENVAT credit of such input service received from a person who is paying service tax on full value;

(iii) CENVAT credit on input services other than those specified in (ii) above, has not been taken under the provisions of the CENVAT Credit Rules, 2004.";

(iv) after serial number 9 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

"9A	<i>Transport of passengers, with or without accompanied belongings, by a contract carriage other than motorcab.</i>	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.";</i>
-----	---------------------------------------------------------------------------------------------------------------------	----	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

(v) in the serial number 9A, so inserted, for the entry in the column (2), the following entry shall be substituted with effect from such date as the Central Government may notify for omission of the words "radio taxis" in the section 66D(o)(vi) of the Finance Act 1994, namely:-

*"Transport of passengers, with or without accompanied belongings, by-*

*a. a contract carriage other than motorcab.*

*b. a radio taxi.";*

(vi) in the serial number 10, for the existing entry in column (3), the entry "40" shall be substituted with effect from the 1st day of October, 2014;

(vii) against serial number 11, in column (4), for the words "input services", wherever occurring, the words "input services other than the input service of a tour operator" shall be substituted with effect from the 1st day of October, 2014.

2. Save as otherwise provided in this notification, the amendments shall come into force on the 11th day of July, 2014.

**[F.No. 334/15/2014 - TRU]**

**(Akshay Joshi)**

**Under Secretary to the Government of India**

**Note:-**The principal notification was published in the Gazette of India, Extraordinary, *vide* notification No. 26/2012 - Service Tax, dated 20th June, 2012, *vide* number G.S.R. 468 (E), dated the 20th June, 2012 and was last amended by notification No.9/2013- Service Tax, dated the 8th May, 2013 *vide* G.S.R. 296 (E), dated the 8th May, 2013.

**09/2014-ST – RCM amended**

**Dated : July 11, 2014**

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

1. (1) These rules may be called the Service Tax (Amendment) Rules, 2014.

(2) Save as otherwise provided in these rules, they shall come into force on the 11th July, 2014.

2. In the Service Tax Rules, 1994 (hereinafter referred to as the said rules),-

(A) in rule 2, in sub-rule (1), in clause (d), in sub-clause (i),-

(a) after item (A), the following item shall be inserted , namely:-

***"(AA) in relation to service provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company, the recipient of the service;"***

(b) for item (EE),the following item shall be substituted, namely:-

***"(EE) in relation to service provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate, the recipient of such service;"***

(B) in rule 6 of the said rules, for sub-rule (2), the following sub-rule shall be substituted with effect from the 1st October, 2014, namely:-

***"(2) Every assessee shall electronically pay the service tax payable by him, through internet banking:***

***Provided that the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction, may for reasons to***

***be recorded in writing, allow the assessee to deposit the service tax by any mode other than internet banking."***

**[F.No. 334 /15/2014- TRU]**

**(Akshay Joshi)**

**Under Secretary to the Government of India**

**Note:-**The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) by notification No. 2/94-ST, dated the 28th June, 1994 *vide* number G.S.R. 546 (E), dated the 28th June, 1994 and last amended by notification No.16/2013-Service Tax, dated the 22nd November, 2013 *vide* number G.S.R. 749 (E), dated the 22nd November, 2013.

**10/2014-ST – RCM amended**

**Dated : July 11, 2014**

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 472 (E), dated the 20th June, 2012, namely:-

1. In the said notification,-

(i) in paragraph I, in clause (A),-

(a) after sub-clause (i), the following sub-clause shall be inserted, namely:-

*"(ia) provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company;"*

(b) for sub-clause (iva), the following sub-clause shall be substituted, namely :-

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

(ii) in paragraph II, in the TABLE,-

(a) for all the headings of the columns, the following shall respectively be substituted namely:-

<i>"Sl.No</i>	<i>Description of a service</i>	<i>Percentage of service tax payable by the person providing service</i>	<i>Percentage of service tax payable by the person receiving the service</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)"</i>

(b) after serial number 1 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

"1A.	<i>in respect of services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company</i>	<i>Nil</i>	<i>100%";</i>
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(c) against serial number 5A of column (1) , for the entries in column (2), the following entry shall be substituted namely:-

*"in respect of services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate";*

(d) in serial number 7, against item (b), in columns (3) and (4), for the existing entries, the entries "50%" and "50%" shall respectively be substituted with effect from the 1st day of October, 2014.

2. Save as otherwise provided herein, this notification shall come into force on the 11th day of July, 2014.

**[F.No. 334 /15/ 2014-TRU]**

**(Akshay Joshi)**

**Under Secretary to the Government of India**

**Note:-**The principal notification was published in the Gazette of India, Extraordinary, by notification No. 30/2012 - Service Tax, dated the 20th June, 2012, *vide* number G.S.R. 472 (E), dated the 20th June, 2012 and last amended by notification No. 45/2012-Service Tax, dated the 7th August, 2012 *vide* number G.S.R. 621 (E), dated the 7th August, 2012



**11/2014-ST – Valuation Rules amended**

**Dated : July 11, 2014**

In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely:--

1. (1) These rules may be called the Service Tax (Determination of Value) Amendment Rules, 2014.

(2) They shall come into force on the 1st day of October 2014.

2. In the Service Tax (Determination of Value) Rules, 2006, in rule 2A, in clause (ii), for sub-clauses (B) and (C), the following sub-clause shall be substituted, namely:--

***"(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for,-***

***(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or***

***(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,***

***service tax shall be payable on seventy per cent. of the total amount charged for the works contract".***

**[F.No. 334 /15 /2014 -TRU]**

**(Akshay Joshi)**

**Under Secretary to the Government of India**

**Note:-**The principal rules were notified *vide* notification No.12/2006-Service Tax, dated the 19th April, 2006, published in the Gazette of India, Extraordinary, *vide* number G.S.R.228 (E), dated the 19th April, 2006 and last amended by notification No.24/2012-Service Tax, dated the 6th June, 2012, *vide* number G.S.R.431(E), dated the 6th June, 2012.

**12/2014-ST – Interest rates notified**

**Dated : July 11, 2014<sup>450</sup>**

In exercise of the powers conferred by section 75 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification No.26/2004 Service Tax, dated 10th September, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.601 (E), dated the 10th September, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby, for the purpose of the said section, fixes the following rates of simple interest per annum for delayed payment of service tax, as given in table below :-

**Table**

Sl.No.	Period of delay	Rate of simple interest
(1)	(2)	(3)
1.	Up to six months	18 per cent
2.	More than six months and up to one year	18 per cent for the first six months of delay and 24 per cent for the delay beyond six months.
3.	More than one year	18 per cent for the first six months of delay; 24 per cent for the period beyond six months up to one year and 30 per cent. for any delay beyond one year.

2. This notification shall come into force on the 1st day of October, 2014.

**[F.No. 334 /15/2014 TRU]**

**(Akshay Joshi)**

**Under Secretary to the Government of India**

<sup>450</sup> To be supercede by Notification No. 13/2016-ST w.e.f. enactment of Finance Bill, 2016

**13/2014-ST – POT amended**

**Dated : July 11, 2014**

In exercise of the powers conferred by clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely:-

1. (1) These rules may be called the Point of Taxation (Amendment) Rules, 2014.

(2) They shall come into force on the 1st day of October, 2014.

2. In the Point of Taxation Rules, 2011,-

(a) in rule 7,-

(i) for the words "contained in these rules" the words and figures "contained in rules 3,4, or 8" shall be substituted;

(ii) for the first proviso, the following proviso shall be substituted, namely:-

***"Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months:"***

(b) after rule 9, the following rule shall be inserted, namely:-

***"10. Notwithstanding anything contained in the first proviso to rule 7, if the invoice in respect of a service, for which point of taxation is determinable under rule 7 has been issued before the 1st day of October, 2014 but payment has not been made as on the said day, the point of taxation shall,-***

***(a) if payment is made within a period of six months of the date of invoice, be the date on which payment is made;***

***(b) if payment is not made within a period of six months of the date of invoice, be determined as if rule 7 and this rule do not exist."***

**[F.No.334/ 15 /2014 -TRU]**

**(Akshay Joshi )**

**Under Secretary to the Government of India**

**Note:-**The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 18/2011 - Service Tax, dated the 1st March,2011 *vide* number G.S.R. 175 (E), dated the 1st March, 2011 and last amended by notification No. 37/2012-Service Tax, dated the 20th June, 2012 *vide* number G.S.R.479 (E), dated the 20th June, 2012.

**14/2014-ST – POPS amended**

**Dated : July 11, 2014**

In exercise of the powers conferred by sub-section (1) of section 66C and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules to amend the Place of Provision of Services Rules, 2012, namely:-

(1) (1) These rules may be called the Place of Provision of Services (Amendment) Rules, 2014.

(2) They shall come into force on the 1st day of October, 2014.

(1) In the Place of Provision of Services Rules, 2012,-

(a) in rule 2 for clause (f), the following clause shall be substituted, namely:-

***'(f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;'***

(b) in rule 4, in clause (a), for the second proviso, the following proviso shall be substituted, namely:-

***"Provided further that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair;"***

(c) in rule 9, for clause (d), the following clause shall be substituted, namely:-

***"(d) Service consisting of hiring of all means of transport other than,-***

***(i) aircrafts, and***

*(ii) vessels except yachts,  
upto a period of one month."*

[F.No. 334 /15/ 2014-TRU]

**(Akshay Joshi)**  
**Under Secretary to the Government of India**

**15/2014-ST –Advance Ruling for private company**

**Dated : July 11, 2014**

In exercise of the powers conferred by sub-clause (iii) of clause (b) of section 96A of the Finance Act, 1994 (32 of 1994), the Central Government hereby specifies "the resident private limited company" as class of persons for the purposes of the said clause.

***Explanation.***- For the purposes of this notification,-

(a) "private limited company" shall have the same meaning as is assigned to "private company" in clause (68) of section 2 of the Companies Act, 2013 (18 of 2013);

(b) "resident" shall have the same meaning as is assigned to it in clause (42) of section 2 read with sub-section (3) of section 6 of the Income-tax Act, 1961 (43 of 1961).

**[F.No. 334/15/2014-TRU]**

**(Akshay Joshi)**

**Under Secretary to the Government of India**

## 21/2014-CE(NT) – CCR amendment

**Dated: July 11, 2014**

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely: -

1. (1) These rules may be called the CENVAT Credit (Sixth Amendment) Rules, 2014.

(2) Save as otherwise provided in these rules, they shall come into force on 11th day of July, 2014.

2. In the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), in rule 2, after clause (q), the following clause shall be inserted, namely-

'(qa) "place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory,

from where such goods are removed;'

3. In the said rules, in rule 4, -

(a) in sub-rule (1), after the second proviso, the following proviso shall be inserted with effect from first day of September 2014, namely :-

*"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub- rule (1) of rule 9."*

(b) in sub-rule (7),-

(i) for the first and second provisos the following provisos shall be substituted, namely:-

*"Provided that in respect of input service where whole of the service tax is liable to be paid by the recipient of service, credit shall be allowed after the service tax is paid:*

*Provided further that in respect of an input service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, the CENVAT credit in respect of such input service shall be allowed on or after the day 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:*



*Provided also that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, except in respect of input service where the whole of the service tax is liable to be paid by the recipient of service, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules :"*

(ii) after the fifth proviso, the following proviso shall be inserted with effect from first day of September, 2014, namely :-

*"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9."*

4. In rule 6 of the said rules, in sub-rule (8), after clause (b), the following proviso shall be inserted, namely;

*"Provided that if such payment is received after the specified or extended period allowed by the Reserve Bank of India but within one year from such period, the service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier in terms of sub rule (3) to the extent it relates to such payment, on the basis of documentary evidence of the payment so received."*

5. In rule 12A of the said rules, in sub-rule (4), for the words "available with one of his registered manufacturing premises", the words, figures and letter "taken, on or before the 10th July, 2014, by one of his registered manufacturing premises " shall be substituted.

**[F.No. 334/15/2014-TRU]**

**(Akshay Joshi)**  
**Under Secretary to the Government of India**

Note.- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 10th September, 2004, vide notification No.23/2004 - Central Excise (N.T.) dated the 10th September, 2004 vide number G.S.R. 600(E) dated the 10th September, 2004 and last amended vide notification No. 15/2014 - Central Excise (N.T.) dated 21st March 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), by number G.S.R. 203 (E), dated the 21st March, 2014.

## 22/2014 – ST – Appointment of Officers

New Delhi, the 16<sup>th</sup> September, 2014

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G.S.R (E).- In exercise of the powers conferred by clause (b) of section 2 of the Central Excise Act, 1944 (1 of 1944), read with clause (55) of section 65B of the Finance Act, 1994 (32 of 1994), rule 3 of the Central Excise Rules, 2002 and rule 3 of the Service Tax Rules, 1994 and in supercession of the notification No. 46/98-SERVICE TAX, dated the 28<sup>th</sup> January, 1998, published vide number G.S.R. 59(E), dated the 28<sup>th</sup> January, 1998 and No. 7/2004-CE, dated the 11<sup>th</sup> March, 2004, published vide number G.S.R 187(E), dated the 11<sup>th</sup> March, 2004, the Central Board of Excise and Customs hereby appoints the officers in the Directorate General of Audit, Directorate General of Central Excise Intelligence and Directorate General of Service Tax specified in column (2) of the Table below as Central Excise Officers and invests them with all the powers under Chapter V of the Finance Act, 1994 (32 of 1994) and the rules made there under, throughout the territory of India, as are exercisable by the Central Excise Officers of the corresponding rank as specified in column (3) of the said Table, namely:-

TABLE

<u>Sl. No.</u>	<u>Officers</u>	<u>Officers whose powers are to be exercised</u>
<u>(1)</u>	<u>(2)</u>	<u>(3)</u>
<u>1.</u>	<u>Principal Director General, Central Excise Intelligence or Principal Director General, Service Tax</u>	<u>Principal Chief Commissioner</u> -
<u>2.</u>	<u>Director General, Audit</u>	<u>Chief Commissioner</u>
<u>3.</u>	<u>Principal Additional Director General, Central Excise Intelligence, Principal Additional Director General, Service Tax or Principal Additional Director General, Audit</u>	<u>Principal Commissioner</u> -
<u>4.</u>	<u>Additional Director General, Central Excise Intelligence, Additional Director General, Service Tax or Additional Director General, Audit</u>	<u>Commissioner</u> -
<u>5.</u>	<u>Additional Director, Central Excise Intelligence, Additional Director, Service Tax or Additional Director, Audit</u>	<u>Additional Commissioner</u>
<u>6.</u>	<u>Joint Director, Central Excise Intelligence, Joint Director, Service Tax or Joint Director, Audit</u> -	<u>Joint Commissioner</u>

7.	<u>Deputy Director or Assistant Director, Central Excise Intelligence, Deputy Director or Assistant Director, Service Tax or Deputy Director or Assistant Director, Audit</u> -	<u>Deputy Commissioner or Assistant Commissioner</u> -
8.	<u>Senior Intelligence Officer, Central Excise Intelligence, Superintendent, Service Tax or Superintendent, Audit</u> -	<u>Superintendent</u> -
9.	<u>Intelligence Officer, Central Excise Intelligence, Inspector, Service Tax or Inspector, Audit</u> -	<u>Inspector</u> -

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2. This notification shall come into force on 15<sup>th</sup> October, 2014.

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(Himani Bhayana)  
Under Secretary to the Government of India  
[F.No 137/29/2014-Service Tax]

## **23/2014-ST – Service Tax (Amendment) Rules**

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

1. (1) These rules may be called the Service Tax (Third Amendment) Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Service Tax Rules, 1994, in rule 5A, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) Every assessee, shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994,-

(i) the records maintained or prepared by him in terms of sub-rule (2) of rule 5;

(ii) the cost audit reports, if any, under section 148 of the Companies Act, 2013 (18 of 2013); and

(iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961), for the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be."

(Himani Bhayana)

Under Secretary to the Government of India

[F.No 137/46/2014-Service Tax]

Note:- *The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-*

*SERVICE TAX, dated the 28th June, 1994 vide number G.S.R. 546 (E), dated the 28th June, 1994 and last amended vide notification No.19/2014-SERVICE TAX, dated the 25<sup>th</sup> August, 2014 vide number G.S.R. 614 (E), dated the 25<sup>th</sup> August, 2014.*

G.S.R (E).-In exercise of the powers conferred by rule 3 of the Central Excise Rules, 2002 and rule 3 of the Service Tax Rules, 1994, the Central Board of Excise and Customs, makes the following amendments in the notification no. 20/2014-Service Tax dated 16th September, 2014, published vide G.S.R. (E). 648 dated 16th September, 2014, namely:-

In Table-3, for Sl. Nos. 2, 3, 7, 9, 14, 19, 20 and 21 and the entries relating thereto, in columns (2) and (3) of the said Table, the following entries shall be substituted respectively, namely:-

TABLE- 3

Territorial jurisdiction of the Principal Commissioners of Service Tax, Commissioners of Service Tax, Principal Commissioners of Central Excise and Commissioners of Central Excise.

S.No	Officers	Jurisdiction
(1)	(2)	(3)
1.	Principal Commissioner of Service Tax - I, Bangalore	BBMP Wards 9(Vidyaranyapura), 10(DoddaBommasandra), 11(Kuvempu Nagar), 12(Shettihalli), 13(Mallasandra), 14(Bagalakunte), 15(TDasarahalli), 16(Jalahalli), 17(J P Park), 35(AramaneNagara), 36(Mattikere), 37(Yeshwanthpura), 38(HMT Ward), 39(Chokkasandra), 40(DoddaBidarakallu), 41(Peenya Industrial Area), 42(Lakshmi Devi Nagar), 43(Nandini Layout), 44(MarappanaPalya), 45(Malleswaram), 64(Rajamahalguttahalli), 65(KaduMalleshwar ward), 66(Subramanya

		Nagar), 67(Nagapura), 68(Mahalakshimpuram), 69(Laggere), 70(Rajagopal Nagar), 71(Hegganahalli), 72(Herohalli), 73(Kottegepalya), 74(ShakthiGanapathi Nagar), 75(Shankar Matt), 76(Gayithri Nagar), 77(Dattatreya Temple), 78(Pulikeshinagar), 90(Haloor), 91(Bharathi Nagar), 92(Shivaji Nagar), 93(Vasanth Nagar), 94(Gandhinagar), 95(Subhash Nagar), 96(Okalipuram), 97(Dayananda Nagar), 98(Prakash Nagar), 99(Rajaji Nagar), 100(Basaveshwara Nagar), 101(Kamakshipalya), 102(Vrisabhavathi Nagar), 103(Kaveripura), 104(Govindaraja Nagar), 105(AgraharaDasarahalli), 106(Dr. Raj Kumar Ward), 107(Shivanagara), 108(Sriramamandir), 109(Chickpete), 110(Sampangiram Nagar), 111(Shantala Nagar), 117(Shanthi Nagar), 118(SudhamNagara), 119(DharmarayaSwamy Temple),
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		120(Cottonpete), 121(Binnipete), 122(KempapuraAgrahara), 123(Vijayanagar), 124(Hosahalli), 125(Marenahalli), 126(MaruthiMandir ward), 127(Mudalapalya), 128(Nagarabhavi), 129(JnanaBharathi ward), 130(Ullalu), 131(Nayandahalli), 132(Attiguppe), 133(Hampi Nagar), 134(Bapuji Nagar), 135(Padarayanapura), 136(Jagajivanaramnagar), 137(Rayapuram), 138(Chalavadipalya), 139(K R Market), 140(Chamrajapet), 141(Azad Nagar), 142(Sunkenahalli), 143(Vishveshwara Puram), 144(Siddapura), 145(HombegowdaNagara), 153(Jayanagar), 154(Basavanagudi), 155(Hanumanth Nagar), 156(Srinagar), 157(GaliAnjenaya Temple ward), 158(Deepanjali Nagar), 159(Kengeri), 160(Rajarajeshwari Nagar), 161(Hosakerehalli), 162(Girinagar), 163(Katriguppe), 164(Vidyapeeta ward), 165(Ganesh Mandir
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	<p>ward),  166(Karisandra),  167(Yediyur),  168(Pattabhiram  Nagar),  169(Byrasandra),  170(JayanagarEast),177(JPNagar),  178(Sarakki),  179(Shakambari  Nagar),  180(Banashankari  Temple  ward),  181(Kumaraswamy  Layout),  182(Padmanabha  Nagar),  183(Chikkalsandra),  184(Uttarahalli),  185(Yelchenahalli),  186(Jaraganahalli),  197(Vasanthpura),  198(Hemmigepura)</p> <p>and  the  areas falling under the revenue  district of  Ramanagara, Taluk of  Nelamangala in  Bengaluru Rural, Areas in the  Hesaraghatta  Hobli, Yeswantpura Hobli and  Dasanapura  Hobli of Bengaluru North Tq, the  areas falling  under the Talukas of  Kunigal, Tumkur, Gubbi,  Tiptur, Turuvekere, and  Chikkanayakanahalli in  the Tumkur District,  Areas falling on the Left  (South) side of NH4 (Bengaluru-Pune  Road) of  Shira Taluk  and  the areas in the villages of  SeebiAgrahara,  Jodidevarahalli, Kappanahalli,  Brahmasandra,  Kallenahalli,  Vaddanahalli</p>
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		of KallambellaHobli of Sira Taluk.
2.	Principal Commissioner of Service Tax  - II, Bangalore	BBMP Ward nos. Rama Nagar 57(C V n ), 58(Ne Tippasand 79(Sarva Nagar w ara), gna ), 80(Hoys Nagar) 81(Vijna Nagar ala , na ), 82(Garudac 83(Kadugod har Playa), i), 84(Hagadur) 85(DoddaNekkun , di), 86(Marathah Airport) alli), 87(HAL , 88(Jeevanbh 89(Jogupaly ima Nagar), a), 112(Domlur 113(KonenaAgrah , ara), 114(Agaram , 115(Vannarpet), 116(Nilasandra),146(Lakk asandra), 147(Adugodi), 149(Varthur 148(Ejipura), u), 150(Belland 151(Koramangala uru), 152(Suddagunte 171(Gurappanap Palya), aly), 172(Madival 173(Jakkasan 174(HS a), dra), R Layou 175(Bommanahal 176(BT t), li), M Layou 187(Puttenah 188(Bilekhal t), alli), li), 189(Hongasa 190(Mangammanapa ndra), lya), 191(Singasan 192(Begur), dra), 193(Arakere), 194(Gottiger 195(Konankunte e), 196(Anjanapura) and the other areas falling south of Bengaluru Urban District beyond BBMP jurisdictions and within Bengaluru Urban District and upto the borders of Tamil Nadu, the areas under Taluk,

		Bengaluru south and Anekal Taluk and Varthurhobli of Bengaluru East Taluk.
3.	Principal Commissioner of Service Tax-I, Delhi	Districts of Central Delhi, East Delhi, North-East Delhi, Shahdara and Chanakyapuri sub-division of New Delhi District in National Capital Territory of Delhi.
4.	Commissioner of Service Tax-III, Delhi	Districts of North Delhi, North-West Delhi, West Delhi, South-Delhi sub-divisions, West and of Delhi Cantt and Vasant Vihar of New Delhi District in National Capital Territory of Delhi.
5.	Principal Commissioner of Service Tax-I, Mumbai	Area War Municipal s in 'A' d of the al Corporation of Greater Mumbai of the State of Maharashtra comprising postal PIN htra Code Nos. 400001, 400021, 400023, 400005, 400038 and 400039(excluding the areas covered under PIN code No.400020 of the said Ward 'A') and in the areas in India's (i) territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act,

S.No	Officers	Jurisdiction
(1)	(2)	(3)
		1976 (80 of 1976); (ii) the seabed and the subsoil underlying the territorial waters; (iii) the air space above its territory and territorial waters; and (iv) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.
6.	Commissioner of Service Tax -VI, Mumbai	Areas in the wards of K (West), P (South), P (North), R (Central), R (South), R (North) of Municipal Corporation of Greater Mumbai and Palghar District in the State of Maharashtra.
7.	Commissioner of Service Tax -VII, Mumbai	(i) Areas comprising in the Wards of L, M (East), M (West), N, S and T of Municipal Corporation of Greater Mumbai in the State of Maharashtra (ii) The entire Districts of Thane and Raigad in the State of Maharashtra.
8.	Principal Commissioner of Service Tax, Noida	In the Districts of Bulandshahr and Gautam Budh Nagar (excluding the area from Ghaziabad border in North and West to 'Maant Khand Ganga Nahar' passing through Kot Ka Pul and Maant Poshak Gang Nahar in East and further bounded by Delhi Kanpur main railway line in South), in the state of

Uttar Pradesh.

(Himani Bhayana)  
Under Secretary to the  
Government of India  
F.No 137/29/2014-Service Tax

G.S.R (E).- In exercise of the powers conferred by rule 3 of the Service Tax Rules, 1994, read with notification No. 6/2009-Service Tax dated the 30<sup>th</sup> January, 2009, published vide G.S.R. 60 (E) dated the 30<sup>th</sup> January, 2009 and notification No. 22/2014-Service Tax dated the 16<sup>th</sup> September, 2014, published vide G.S.R. 650 (E) dated the 16<sup>th</sup> September, 2014, the Central Board of Excise and Customs hereby specifies that the Principal Director General of Central Excise Intelligence shall have jurisdiction over the Principal Commissioners of Service Tax or the Principal Commissioners of Central Excise or the Commissioners of Service Tax or the Commissioners of Central Excise, as the case may be, for the purpose of assigning show cause notices issued by the Directorate General of Central Excise Intelligence, for adjudication, by such Principal Commissioners of Service Tax or the Principal Commissioners of Central Excise or the Commissioners of Service Tax or the Commissioners of Central Excise, as the case may be.

(Himani Bhayana)  
Under Secretary to the Government of India  
[F.No 137/29/2014-Service Tax]

### **3/2015-ST – Notification No. 42.2012-ST rescinded**

G.S.R. ---(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby rescinds the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 42/2012-Service Tax, dated 29th June 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. 520 (E), dated 29th June 2012, except as respects things done or omitted to be done before such recession.

[F.No. 334 /5/ 2015-TRU]

(Akshay Joshi)

Under Secretary to the Government of India

#### **4/2015-ST – Amendment to Notification No. 31/2012-ST**

G.S.R. --- (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.31/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R 473 (E), dated the 20th June, 2012, namely:-

1. In the said notification, in the Table, against Sl.No. 1, in column (2), for the words "port or airport", at both the places where they occur, the words "port, airport or land customs station" shall be substituted. 2. This notification shall come into force on the 1 st day of April, 2015.

[F. No.334/5/2015 -TRU]

(Akshay Joshi)

Under Secretary to the Government of India

Note:- The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) by notification No. 31/2012 - Service Tax, dated the 20th June, 2012, vide G.S.R. 473 (E), dated the 20th June, 2012.



## 5/2015-ST – Service Tax (Amendment) Rules, 2015

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

1. (1) These rules may be called the Service Tax (Amendment) Rules, 2015.

(2) Save as otherwise provided in these rules, they shall come into force on the 1st day of March, 2015.

2. In the Service Tax Rules, 1994,-

(a) in rule 2, in sub-rule (1),-

(i) after clause (a), the following clause shall be inserted, namely:-

‘(aa) “aggregator” means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator;’

(ii) after clause (bc), the following clause shall be inserted, namely:-

(bca) “brand name or trade name” means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person;’

(iii) in clause (d), in sub-clause (i),-

(I) after item (AA), the following item shall be inserted, namely:-

‘(AAA) in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service: Provided that if the aggregator does not have a physical presence in the taxable territory, any person representing the aggregator for any purpose in the taxable territory shall be liable for paying service tax; Provided further that if the aggregator does not have a physical presence or does not have a representative for any purpose in the taxable territory, the aggregator shall appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax.’

(II) in item (E), from such date as the Central Government may, by a notification in the Official Gazette, appoint, the word “support” shall be omitted;

(III) after item (EE), the following items shall be inserted with effect from the 1st day of April 2015, namely:

“(EEA)in relation to service provided or agreed to be provided by a mutual fund agent or distributor to a mutual fund or asset management company, the recipient of the service;

(EEB) in relation to service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent, the recipient of the service;”;

(b) in rule 4,-

(i) sub-rule (1A) shall be omitted.

(ii) after sub-rule (8), the following sub-rule shall be inserted, namely:- “(9) The registration granted under this rule shall be subject to such conditions, safeguards and procedure as may be specified by an order issued by the Board.”

(c) after rule 4B, the following rule shall be inserted, namely:-

“4C. Authentication by digital signature-

(1) Any invoice, bill or challan issued under rule 4A or consignment note issued under rule 4B may be authenticated by means of a digital signature.

(2)The Board may, by notification, specify the conditions, safeguards and procedure to be followed by any person issuing digitally signed invoices.”;

(d) in rule 5, after sub-rule (3), the following sub-rules shall be inserted, namely,-

“(4) Records under this rule may be preserved in electronic form and every page of the record so preserved shall be authenticated by means of a digital signature.

(5) The Board may, by notification, specify the conditions, safeguards and procedure to be followed by an assessee preserving digitally signed records. Explanation – For the purposes of rule 4C and sub-rule (4) and (5) of this rule,-

(i) The expression “authenticate” shall have the same meaning as assigned in the Information Technology Act, 2000 (21 of 2000).

(ii) The expression “digital signature” shall have the meaning as defined in the Information Technology Act, 2000 (21 of 2000) and the expression “digitally signed” shall be construed accordingly.”

(e)in rule 6,

(i)sub-rule (6A) shall be omitted, with effect from the date on which the Finance Bill, 2015, receives the assent of the President;

(ii) from such dates as the Central Government may, by a notification in the Official Gazette, appoint,-

(a) in sub-rule (7), for the figures "0.6%" and "1.2 %", the figures and words "0.7 per cent." and "1.4 per cent." shall respectively be substituted;

(b) in sub-rule (7A), in clause(ii), for the figures and words "3 per cent." and "1.5 per cent.", the figures and words "3.5 per cent." and "1.75 per cent." shall respectively be substituted;";

(c) in sub-rule (7B),- (i) in item (a), for the figures and words "0.12 per cent" and "rupees 30", the figures and words "0.14 per cent" and "rupees 35" shall respectively be substituted; (ii) in item (b), for the figures and words "120 and 0.06 per cent", the figures and words "140 and 0.07 per cent." shall be substituted; (iii) in item (c), for the figures and words "660 and 0.012 per cent" and "rupees 6,000", the figures and words "770 and 0.014 per cent" and "rupees 7,000" shall respectively be substituted;

(d) in sub-rule (7C),- (A) in the Table, in column (2),- (i) against Sl. No. 1, for the figures "7000", the figures "8200" shall be substituted; (ii) against Sl. No. 2, for the figures "11000", the figures "12800" shall be substituted;

(B) in the Explanation, item (i) shall be omitted, with effect from the date on which the Finance Bill, 2015, receives the assent of the President.

[F.No. 334 /5/2015- TRU]

(Akshay Joshi)

Under Secretary to the Government of India

Note:-The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) by notification No. 2/94-Service Tax, dated the 28th June, 1994 vide number G.S.R. 546 (E), dated the 28th June, 1994 and last amended vide notification No.23/2014-Service Tax, dated the 5th December, 2014 vide number G.S.R. 872(E), dated the 5th December, 2014.

**G.S.R.....(E).**- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-Service Tax, dated the 20<sup>th</sup> June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20<sup>th</sup> June, 2012, namely:-

1. In the said notification,-

(i) for entry 2, the following entry shall be substituted, namely,-

“2. (i) Health care services by a clinical establishment, an authorised medical practitioner or para-medics;

(ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above;”;

(ii) in entry 12, items (a), (c) and (f) shall be omitted;

(iii) in entry 14, in item (a), the words “an airport, port or” shall be omitted; (iv) for entry 16, the following entry shall be substituted, namely:-

“16. Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is not more than one lakh rupees:

Provided that the exemption shall not apply to service provided by such artist as a brand ambassador.”;

(v) in entry 20, for item (i), the following item shall be substituted, namely:-

"(i) milk, salt and food grain including flours, pulses and rice;"

(vi) in entry 21, for item (d), the following item shall be substituted, namely:- "(d)

milk, salt and food grain including flours, pulses and rice;"

(vii) in entry 26A, after item (c), the following item shall be inserted, namely- “(d)

Varishtha Pension Bima Yojana;”;

(viii) in entry 29, items (c), (d) and (e) shall be omitted;

(ix) in entry 30, in item (c), for the words “any goods”, the words “any goods excluding alcoholic liquors for human consumption,” shall be substituted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint;

(x) entry 32 shall be omitted;

(xi) after entry 42, the following entries shall be inserted, namely,-

“43. Services by operator of Common Effluent Treatment Plant by way of treatment of effluent;

44. Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables;

45. Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo;

46. Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members;”;

(xii) after entry 46 so inserted, the following entry shall be inserted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:-

“47. Services by way of right to admission to,-

(i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;

(ii) recognised sporting event;

(iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than Rs 500 per person.”.

2. In the said notification, in paragraph 2 relating to Definitions,-

(a) after clause (xa), the following clause shall be inserted, namely:-

‘(xaa) “national park’ has the meaning assigned to it in the clause (21) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);’;

(b) after clause (zaa), the following clause shall be inserted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:-

‘(zab) “recognised sporting event” means any sporting event,-

- (i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;
- (ii) covered under entry 11.’;

(c) for the clause (zi), the following clauses shall be substituted, namely:-

‘(zi) “tiger reserve” has the meaning assigned to it in clause (e) of section 38K of the Wild Life (Protection) Act, 1972 (53 of 1972);

(zj) “trade union” has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926);

(zk) “wildlife sanctuary” means sanctuary as defined in the clause (26) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);

(zl) “zoo” has the meaning assigned to it in the clause (39) of the section 2 of the Wild Life (Protection) Act, 1972 (53 of 1972).’

3. Save as otherwise provided in this notification, this notification shall come into force on the 1<sup>st</sup> of April, 2015.

[F. No.334/5/2015 -TRU]

(Akshay Joshi)

**Under Secretary to the Government of India**

**Note:-**The principal notification was published in the Gazette of India, Extraordinary, by notification No. 25/2012 - Service Tax, dated the 20<sup>th</sup> June, 2012, *vide* number G.S.R. 467 (E), dated the 20<sup>th</sup> June, 2012 and last amended *vide* notification No.17/2014 - Service Tax, dated the 20<sup>th</sup> August, 2014 *vide* number G.S.R. 598(E), dated the 20<sup>th</sup> August, 2014.

## **7/2015-ST - Amendments in Notification No. 30/2012-ST**

**G.S.R.(E).**-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/2012-Service Tax, dated the 20<sup>th</sup> June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20<sup>th</sup> June, 2012, namely:-

1. In the said notification,-

(i) in paragraph I, in clause (A),-

(a) after sub-clause (ia), the following sub-clauses shall be inserted, namely:-

"(ib) provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company";

"(ic) provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent";

(b) in sub-clause (iv), in item (C), with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the words "by way of support services" shall be omitted;

(c) after the sub-clause (v), with effect from the 1<sup>st</sup> day of March, 2015, the following sub-clause shall be inserted, namely:-

"(vi) provided or agreed to be provided by a person involving an aggregator in any manner";

(ii) in paragraph (II),-

(A) for the portion beginning with brackets, letters and words "(II) The extent of service tax payable" and ending with words "namely:-", the following shall be substituted with effect from 1<sup>st</sup> March, 2015, namely:-

“II. The extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I shall be as specified in the following Table, namely:-”;

(B) in the Table,-

(i) in column (4), for the column heading, the following column heading shall be substituted with effect from 1st March, 2015, namely:-

“Percentage of service tax payable by any person liable for paying service tax other than the service provider”;

(ii) after Sl. No. 1A and the entries relating thereto, the following Sl Nos. and entries shall be inserted, namely:-

"1B.	in respect of services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company	Nil	100%
1C.	in respect of service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent	Nil	100%";

(iii) against Sl. No. 8, in column (3) and column (4), for the existing entries, the entries “Nil” and “100%” shall respectively be substituted;

(iv) after Sl. No. 10 and the entries relating thereto, with effect from 1<sup>st</sup> March, 2015, the following Sl. No. and entries shall be inserted, namely:-

" 11.	in respect of any service provided or agreed to be provided by a person involving an aggregator in any manner	Nil	100%".
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2. Save as otherwise provided, this notification shall come into force on the 1<sup>st</sup> day of April, 2015.

[F.No. 334 /5/ 2015-TRU]

(Akshay Joshi)

Under Secretary to the Government of India



**8/2015-ST - Amendments in Notification No. 26/2012-ST**

**G.S.R. ---(E).**- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2012- Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 468 (E), dated the 20th June, 2012, namely:-

1. In the said notification, in the Table,-

(i) against Sl. No. 2, in column (4), for the entry, the following entry shall be substituted, namely:-

"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) against Sl. No. 3, in column (4), for the entry " Nil", the entry "Same as above" shall be substituted;

(iii) for Sl. No. 5 and the entries relating thereto, the following serial number and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)
"5	Transport of passengers by air, with or without accompanied belongings in  (i) economy class	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.";

(iv) against Sl. No. 7, in column (3), for the entry "25", the entry "30" shall be substituted;

(v) Sl. No. 8 and entries relating thereto shall be omitted;

(vi) against Sl. No. 10, in column (3), for the entry "40", the entry "30" shall be substituted.

2. This notification shall come into force on the 1<sup>st</sup> day of April, 2015.

[F.No. 334/5/2015 - TRU]

(Akshay Joshi)  
Under Secretary to the Government of India

**Note:-**The principal notification No. 26/2012 - Service Tax, dated 20th June, 2012, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) *vide* number G.S.R. 468 (E), dated the 20<sup>th</sup> June, 2012 and was last amended by notification No.08/2014-Service Tax, dated the 11<sup>th</sup> July, 2014 *vide* G.S.R. 477 (E), dated the 11<sup>th</sup> July, 2014.

## 9/2015 – ST – Resident Firm

G.S.R. (E).- In exercise of the powers conferred by sub-clause (iii) of clause (b) of section 96A of the Finance Act, 1994 (32 of 1994), the Central Government hereby specifies "resident firm" as class of persons for the purposes of the said sub-clause.

Explanation. - For the purposes of this notification,-

- (a) "firm" shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932 (9 of 1932) , and includes-
- (i) the limited liability partnership as defined in clause (n) of sub-section (1) of the section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); or
  - (ii) limited liability partnership which has no company as its partner; or (iii) the sole proprietorship; or
  - (iv) One Person Company.
- (b) (i) "sole proprietorship" means an individual who engages himself in an activity as defined in sub-clause (a) of section 96A of the Finance Act, 1994.
- (ii) "One Person Company" means as defined in clause (62) of section 2 of the Companies Act, 2013 (18 of 2013).
- (c) "resident" shall have the meaning assigned to it in clause (42) of section 2 of the Income-tax Act, 1961 (43 of 1961) in so far as it applies to a resident firm.

[F. No. 334/5/2015-TRU]

(Akshay Joshi)  
Under Secretary to the Government  
of India

## **10/ 2015 – ST – Service provided against scrip**

G.S.R. 273 (E). 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), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided or agreed to be provided against a scrip by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the said Act.

2. Application. - This notification shall be applicable to the Merchandise Exports from India Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.04 read with paragraph 3.05 of the Foreign Trade Policy.

3. The exemption shall be subject to the following conditions, namely:-

- (1) that the conditions (1) to (3) specified in paragraph 2 of the Notification No. 24/2015-Customs, dated the 8<sup>th</sup> April, 2015 are complied and the said scrip has been registered with the Customs Authority at the port of registration specified on the said scrip (hereinafter referred as the said Customs Authority);
- (2) that the holder of the scrip, to whom taxable services are provided or agreed to be provided shall be located in the taxable territory;
- (3) that the holder of the scrip who may either be the person to whom the scrip was originally issued or a transferee-holder, presents the scrip to the said Customs Authority along with a letter and an invoice or challan or bill, as the case may be, issued under rule 4A of the Service Tax Rules, 1994 by the service provider indicating details of his jurisdictional Central Excise Officer (hereinafter referred to as the said Officer) and the description, value of the taxable service provided or agreed to be provided and service tax leviable thereon;
- (4) that the said Customs Authority, taking into account the debits already made under notification number 24/2015-Customs, dated the 8<sup>th</sup> April, 2015, notification No 20/2015-Central Excise, dated the 8<sup>th</sup> April, 2015 and this exemption, shall debit the service tax leviable, but for this exemption in or on the reverse of the scrip and also mention the necessary details thereon, updates its own records and sends written advice of these actions to the said Officer;

(5) that the date of debit of service tax leviable, in the scrip, by the said Customs Authority shall be taken as the date of payment of service tax;

(6) that in case the service tax leviable as per the point of taxation determined in terms of the Point of Taxation Rules, 2011 is prior to date of debit or that the rate of tax determined in terms of rule 4 of the Point of Taxation of Rules, 2011, is in excess of the rate of service tax mentioned in the invoice, bill or challan, as the case may be, the holder of the scrip shall pay such interest or short-paid service tax along with interest, as the case may be;

(7) that the holder of the scrip presents the scrip debited by the said Customs Authority within thirty days to the said Officer, along with an undertaking addressed to the said Officer, that in case of any service tax short debited in the scrip, he shall pay such service tax along with applicable interest;

(8) that based on the said written advice and undertaking, the said Officer shall verify and validate, on the reverse of the scrip, the details of the service tax leviable, which were debited by the said Customs Authority, and keep a record of payment of such service tax and interest, if any;

(9) that the service provider retains a copy of the scrip, debited by the said Customs Authority and verified by the said Officer and duly attested by the holder of the scrip, in support of the provision of taxable services under this notification; and

(10) that the said holder of the scrip, to whom the taxable services were provided or agreed to be provided shall be entitled to avail drawback or CENVAT credit of the service tax leviable under section 66B of the said Act, against the service tax debited in the scrip and validated by the said Officer.

4. Any amount due to the Central Government under this notification shall be recoverable under the provisions of the said Act and the rules made there under.

Explanation. - For the purposes of this notification,-

(A) "Foreign Trade Policy" means the Foreign Trade Policy, 2015-2020, published by the Government of India in the Ministry of Commerce and Industry notification number 01/2015-2020, dated the 1<sup>st</sup> April 2015 as amended from time to time;

(B) "Point of taxation" shall have the same meaning assigned to it in clause (e) of rule 2 of the Point of Taxation Rules, 2011;

(D) "Regional Authority" means the Director General of Foreign Trade appointed under section 6 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or an officer authorised by him to grant an authorisation including a duty credit scrip under the said Act;

(E) "Scrip" means Merchandise Exports from India Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.04 read with paragraph 3.05 of the Foreign Trade Policy.

[F.No.605/55/2014-DBK]

(Sanjay Kumar)

Under Secretary to the Government of India

G.S.R. 274 (E). 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), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided or agreed to be provided against a scrip by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the said Act.

2. Application. - This notification shall be applicable to the Service Exports from India Scheme duty credit scrip issued by the Regional Authority in accordance with paragraph 3.10 read with paragraph 3.08 of the Foreign Trade Policy.

3. The exemption shall be subject to the following conditions, namely:-

(1) that the conditions (1) and (2) specified in paragraph 2 of the Notification No. 25/2015-Customs, dated the 8<sup>th</sup> April, 2015 are complied and the said scrip has been registered with the Customs Authority at the port of registration specified on the said scrip (hereinafter referred as the said Customs Authority);

(2) that the holder of the scrip, to whom taxable services are provided or agreed to be provided shall be located in the taxable territory;

(3) that the holder of the scrip who may either be the person to whom the scrip was originally issued or a transferee-holder, presents the scrip to the said Customs Authority along with a letter and an invoice or challan or bill, as the case may be, issued under rule 4A of the Service Tax Rules, 1994 by the service provider indicating details of his jurisdictional Central Excise Officer (hereinafter referred to as the said Officer) and the description, value of the taxable service provided or agreed to be provided and service tax leviable thereon;

(4) that the said Customs Authority, taking into account the debits already made under notification number 25/2015-Customs, dated the 8<sup>th</sup> April, 2015, notification No. 21/2015-Central Excise, dated the 8<sup>th</sup> April, 2015 and this exemption, shall debit the service tax leviable, but for this exemption in or on the reverse of the scrip and also mention the necessary details thereon, updates its own records and sends written advice of these actions to the said Officer;

(5) that the date of debit of service tax leviable, in the scrip, by the said Customs Authority shall be taken as the date of payment of service tax;

(6) that in case the service tax leviable as per the point of taxation determined in terms of the Point of Taxation Rules, 2011 is prior to date of debit or that the rate of tax determined in terms of rule 4 of the Point of Taxation of Rules, 2011, is in excess of the rate of service tax mentioned in the invoice, bill or challan, as the case may be, the holder of the scrip shall

pay such interest or short-paid service tax along with interest, as the case may be;

(7) that the holder of the scrip presents the scrip debited by the said Customs Authority within thirty days to the said Officer, along with an undertaking addressed to the said Officer, that in case of any service tax short debited in the scrip, he shall pay such service tax along with applicable interest;

(8) that based on the said written advice and undertaking, the said Officer shall verify and validate, on the reverse of the scrip, the details of the service tax leviable, which were debited by the said Customs Authority, and keep a record of payment of such service tax and interest, if any;

(9) that the service provider retains a copy of the scrip, debited by the said Customs Authority and verified by the said Officer and duly attested by the holder of the scrip, in support of the provision of taxable services under this notification; and

(10) that the said holder of the scrip, to whom the taxable services were provided or agreed to be provided shall be entitled to avail drawback or CENVAT credit of the service tax leviable under section 66B of the said Act, against the service tax debited in the scrip and validated by the said Officer.

4. Any amount due to the Central Government under this notification shall be recoverable under the provisions of the said Act and the rules made there under.

Explanation. - For the purposes of this notification,-

(A) "Foreign Trade Policy" means the Foreign Trade Policy, 2015-2020, published by the Government of India in the Ministry of Commerce and Industry notification number 01/2015-2020, dated the 1<sup>st</sup> April 2015 as amended from time to time;

(B) "Point of taxation" shall have the same meaning assigned to it in clause (e) of rule 2 of the Point of Taxation Rules, 2011.

(C) "Regional Authority" means the Director General of Foreign Trade appointed under section 6 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or an officer authorised by him to grant an authorisation including a duty credit scrip under the said Act.

(D) "Scrip" means Service Exports from India Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.10 read with paragraph 3.08 of the Foreign Trade Policy.

[F.No.605/55/2014-DBK]

(Sanjay Kumar)

Under Secretary to the Government of India



**12/2015-ST - Amendments in Notification No. 25/2012-ST**

**G.S.R.....(E).**- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central

Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-Service Tax, dated the 20<sup>th</sup> June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20<sup>th</sup> June, 2012, namely:-

1. In the said notification,-

(i) in entry 26, after item (o), the following items shall be inserted, namely:-

“(p) Pradhan Mantri Suraksha Bima Yojna;”

(ii) in entry 26A, after item (d), the following items shall be inserted, namely:-

“(e) Pradhan Mantri Jeevan Jyoti Bima Yojana; (f) Pradhan Mantri Jan Dhan Yojana;”;

(iii) after entry 26A, the following entry shall be inserted, namely:-

“26B Services by way of collection of contribution under Atal Pension Yojana (APY).”

[F. No.334/5/2015 -TRU]

(Akshay Joshi)

Under Secretary to the Government of India

**Note:-** *The principal notification was published in the Gazette of India, Extraordinary, by notification No. 25/2012 - Service Tax, dated the 20<sup>th</sup> June, 2012, vide number G.S.R. 467 (E), dated the 20<sup>th</sup> June, 2012 and last amended vide notification No. 06/2015 - Service Tax, dated the 1<sup>st</sup> March, 2015 vide number G.S.R. 160(E), dated the 1<sup>st</sup> March, 2015.*

### **13/2015-ST - Amendments in Notification No. 26/2012-ST**

**G.S.R. --- (E).**- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central

Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2012- Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 468 (E), dated the 20th June, 2012, namely:-

In the said notification, in the paragraph 2 relating to definitions, clause 'a' shall be omitted.

**[F.No. 334/5/2015 - TRU]**

**(Akshay Joshi)**

**Under Secretary to the Government of India**

**Note:-**The principal notification No. 26/2012 - Service Tax, dated 20th June, 2012, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) *vide* number G.S.R. 468 (E), dated the 20<sup>th</sup> June, 2012 and was last amended by notification No.08/2015-Service Tax, dated the 1<sup>st</sup> March, 2015, *vide* G.S.R. 162(E), dated the 1<sup>st</sup> March, 2015.

#### **14/2015-ST – Applicability of provisions**

**G.S.R. ---(E).-** In exercise of the powers conferred by clauses (a), (c) and (f) of section 107, section 108, sub-sections (2), (3) and (4) of

section 109, section 153 and section 159 of the Finance Act, 2015 (No. 20 of 2015), the Central Government hereby appoints the 1st day of June, 2015 as the date on which the provisions of clauses (a), (c) and (f) of section 107, section 108, sub-sections (2), (3) and (4) of section 109, section 153 and section 159 of the said Act shall come into force.

**[F.No. 334/5/2015 - TRU]**

**(Akshay Joshi)**

**Under Secretary to the Government of India**

### **15/2015-ST – Applicability of provisions**

**G.S.R.....(E).**- In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act,

1994 (32 of 1994), the Central Government hereby appoints the 1<sup>st</sup> day of June, 2015 as the date on which the provisions of sub-clauses (a), (b) and (c) and item (A) of sub-clause (d) of clause (ii) of sub-paragraph (e) of paragraph 2 of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 05/2015 – Service Tax, dated 1<sup>st</sup> March, 2015, published in the gazette of India, Extraordinary, vide number G.S.R. 159(E), dated 1<sup>st</sup> March, 2015 shall come into force.

[F. No.334/5/2015 -TRU]

(Akshay Joshi)

Under Secretary to the Government of India

### **16/2015-ST – Applicability of Provisions**

**G.S.R.....(E).**- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public

interest so to do, hereby appoints the 1<sup>st</sup> day of June, 2015 as the date on which the provisions of sub-paragraphs (ix) and (xii) of paragraph 1 and sub-paragraph (b) of paragraph 2 of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 06/2015 – Service Tax, dated the 1<sup>st</sup> March, 2015, published in the Gazette of India, Extraordinary, vide number G.S.R. 160(E), dated the 1<sup>st</sup> March, 2015 shall come into force.

[F. No.334/5/2015 -TRU]

(Akshay Joshi)

Under Secretary to the Government of India

### **17/2015-ST – Power System Development Fund Scheme**

G.S.R. (E). - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so

to do, hereby exempts taxable services provided under the Power System Development Fund Scheme of the Ministry of Power (hereinafter referred to as the Scheme), from the whole of the service tax leviable thereon under section 66B of the said Act:-

by way of,-

(A) re-gasification of Liquefied Natural Gas imported by the Gas Authority of India Limited (GAIL);

(B) transportation of the incremental Re-gasified Liquefied Natural Gas (RLNG) (e- bid RLNG) to the power generating companies or plants as specified in the Annexure-I and Annexure -II to this notification,

subject to the following conditions, namely:-

(a) GAIL is appointed as the 'e-bid RLNG Operator' for the gas based plants outside Gujarat and Gujarat State Petroleum Corporation Limited (GSPCL) will be 'e-bid RLNG Operator' for the gas based plants within Gujarat and GAIL will be the only agency for the procurement of e-bid RLNG under the Scheme;

(b) supply of imported spot RLNG 'e-bid RLNG' to the Stranded gas based plants as well as the plants receiving domestic gas, will be upto the target Plant Load Factor (PLF) selected through a reverse e-bidding;

(c) the eligible gas based power plants under the Scheme shall be the Stranded gas based power plants and those plants receiving domestic gas whose actual average PLF achieved during April-January 2014-15 was below the target PLF;

(d) in case of plants receiving domestic gas (Annexure-II), Power System Development Fund Scheme (PSDF) support being made available only for incremental generation of electricity during the relevant period over and above the PLF achieved during April- January 2014-15, for example, if the PLF actually achieved during April-January 2014-

15 is 20%, and if during the relevant period the PLF is 25% from all sources including that from e-bid RLNG, then PSDF support will be made available for the electricity corresponding to  $25 - 20 = 5\%$  PLF, but limited to the actual generation from e-bid RLNG during that relevant period;

(e) the person liable to pay service tax produces the following certificates as verified by the Empowered Pool Management Committee (EPMC) constituted by Ministry of Power *vide* Office Memorandum No. 4/2/2015-Th-1 dated 27<sup>th</sup> March, 2015, within a period of three months, or such extended period not exceeding a further period of six months as the Assistant Commissioner or Deputy Commissioner of Central Excise or Service Tax, may allow, before the jurisdictional Central Excise officer:-

- (i) certification by Central Electricity Authority (CEA) for each participating gas based plant regarding the quantum of electricity to be generated per unit of gas based on the technical parameters of that plant;
- (ii) certification by GAIL regarding quantity of e-bid RLNG gas supplied during the relevant period;
- (iii) self-certification by the participating gas based plant regarding the quantity of e-bid RLNG gas actually utilised during the relevant period for generation of electricity, and Discom-wise supply of such electricity; and
- (iv) certification by participating Discoms regarding the quantum of e-bid RLNG based electricity purchased during the relevant period from participating gas based plants;

(f) the person, failing to produce the aforesaid certificates before Central Excise Officer within the stipulated period, would pay the duty leviable on such services along with the applicable interest thereon;



Provided that the exemption shall not be available if such Re-gasified Liquefied Natural Gas (RLNG) and Liquefied Natural Gas (LNG), is used for generation of electrical energy by captive generating plant as defined in clause (8) of section 2 of the Electricity Act, 2003 (36 of 2003):

Provided further that nothing contained in this notification shall apply on or after the 1<sup>st</sup> day of April, 2017

### **Annexure-I**

#### LIST OF STRANDED GAS BASED POWER PLANTS

<b>S. No.</b>	<b>Name of Power Station</b>	<b>Name of the State</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1	RATNAGIRI (RGPPL-DHABHOL)	MAHARASHTRA
2	PRAGATI CCGT-III	DELHI
3	DHUVARAN CCPP(GSECL)	GUJARAT
4	UTRAN CCPP (GSECL)	GUJARAT
5	PIPAVAV CCPP	GUJARAT
6	DHUVARAN CCPP(GSECL)	GUJARAT
7	HAZIRA CCPP EXT	GUJARAT
8	VATWA CCPP (TORRENT)	GUJARAT
9	RITHALA CCPP(NDPL)	DELHI
10	ESSAR CCPP	GUJARAT
11	UNOSUGEN CCPP	GUJARAT
12	DGEN Mega CCPP	GUJARAT
13	GAUTAMI CCPP	ANDHRA PRADESH
14	GMR - KAKINADA (Tanirvavi)	ANDHRA PRADESH
15	JEGURUPADU CCPP (GVK)	ANDHRA PRADESH
16	KONASEEMA CCPP	ANDHRA PRADESH
17	KONDAPALLI EXTN CCPP	ANDHRA PRADESH

18	VEMAGIRI CCPP	ANDHRA PRADESH
19	SRIBA INDUSTRIES	ANDHRA PRADESH
20	RVK ENERGY	ANDHRA PRADESH
21	SILK ROAD SUGAR	ANDHRA PRADESH
22	LVS POWER	ANDHRA PRADESH
23	GMR Vemagiri Exp	ANDHRA PRADESH
24	Kondapalli Exp St-III	ANDHRA PRADESH
25	Samalkot Exp	ANDHRA PRADESH
26	CCGT by Panduranga	ANDHRA PRADESH
27	Gas Engine by Astha	TELANGANA
27	Kashipur Sravanthi St-I&II	UTTARAKHAND
28	Beta Infratech CCGT	UTTARAKHAND
29	Gama Infraprop CCGT	UTTARAKHAND
30	CCGT by Pioneer Gas Power Ltd.	MAHARASHTRA

## Annexure –II

### LIST OF PLANTS RECEIVING DOMESTIC GAS

(Average PLF during April, 2014 January, 2015)

S. No.	Name of Power Station	Installed Capacity (MW)	Name of the State	PLF (%) (April-January, 2014-2015)
(1)	(2)	(3)	(4)	(5)
1	NTPC, FARIDABAD CCP	431.59	HARYANA	<b>42.3</b>
2	NTPC, ANTA CCP	419.33	RAJASTHAN	<b>47.9</b>
3	NTPC, AURAIYA CCPP	663.36	UTTAR PRADESH	<b>28.5</b>

4	NTPC, DADRI CCPP	829.78	UTTAR PRADESH	<b>34.6</b>
5	NTPC, GANDHAR	657.39	GUJARAT	<b>31.0</b>
6	NTPC, KAWAS CCPP	656.2	GUJARAT	<b>31.8</b>
7	I.P.CCPP	270	DELHI	<b>41.2</b>
8	PRAGATI CCGT-III	750	DELHI	<b>33.5</b>
9	PRAGATI CCPP	330.4	DELHI	<b>66.2</b>
10	DHOLPUR CCPP	330	RAJASTHAN	<b>31.2</b>
11	DHUVARAN CCPP(GSECL)	106.42	GUJARAT	<b>17.1</b>
12	HAZIRA CCPP(GSEG)	156.1	GUJARAT	<b>16.0</b>
13	UTRAN CCPP(GSECL)	144	GUJARAT	<b>10.4</b>
14	URAN CCPP(MAHAGENCO)	672	MAHARASHTRA	<b>60.0</b>
15	TROMBAY CCPP (TPC)	180	MAHARASHTRA	<b>78.5</b>
16	BARODA CCPP (GIPCL)	160	GUJARAT	<b>3.1</b>
17	GODAVARI (SPECTRUM)	208	ANDHRA PRADESH	<b>28.4</b>
18	JEGURUPADU CCPP (GVK)	235.4	ANDHRA PRADESH	<b>25.4</b>
19	KONDAPALLI CCPP (LANCO)	350	ANDHRA PRADESH	<b>19.8</b>
20	PEDDAPURAM (BSES)	220	ANDHRA PRADESH	<b>11.6</b>
21	VIJESWARAN CCPP	272	ANDHRA PRADESH	<b>24.8</b>
22	PEGUTHAN CCPP (GTEC)	655	GUJARAT	<b>5.4</b>
23	SUGEN CCPP (TORRENT)	1147.5	GUJARAT	<b>25.6</b>

[F. No.334/5/2015 -TRU]

(Akshay Joshi)

Under Secretary to the Government of India

### **18/2015-ST – Rank of Officers**

G.S.R. 722(E).- In exercise of the powers conferred by clause (b) of section 2 of the Central excise Act, 1944 (1 of 1944), read with clause (55) of section 65B of the Finance Act, 1944 (32 of 1944), rule 3 of the Central excise Rules, 2002, and rule 3 of the Service Tax rules, 1944, the Central Board of Excise and Customs hereby invests the officers specified in column (1) of the Table below, with the powers of the Central Excise Officer of the rank specified in column (2) of the said Table, in the jurisdiction specified in Notification No. 20/2014-Service Tax, dated the 16<sup>th</sup> September, 2014 published in the Gazette of India, part-II, section 3, Sub-Section(i), vide G.S.R. 648 (E), dated the 16<sup>th</sup> September, 2014, namely:-

TABLE

Central Excise Officer	Rank of the Central Excise Officer whose powers is to be exercised
(1)	(2)
All Principal Commissioners who have been given additional charge of a Chief Commissioner vide Office Order of the Central Board of Excise and Customs No. 126/2015, dated the 20 <sup>th</sup> August, 2015	The Chief Commissioner

[F.No. 390/Review/36/2014-JC]

(M.R. Farooqui)

Under Secretary to the Government of India

### **19/2015-ST – Money Transfer Service**

G.S.R. (E).- Whereas, the Central Government is satisfied that in the period commencing on and from the 1<sup>st</sup> day of July, 2012 and ending with the 13<sup>th</sup> day of October, 2014 (hereinafter referred to as the said period) according to a practice that was generally prevalent, there was non-levy of service tax on the services provided by an Indian Bank or other entity acting as an agent to the Money Transfer Service Operators (hereinafter referred to as MTSO), in relation to remittance of foreign currency from outside India to India (hereinafter referred to as the said practice), and this service was liable to service tax, which was not being paid according to the said practice.

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944) as made applicable to like matters in Service Tax vide section 83 of the Finance Act, 1994 (32 of 1994), the Central Government hereby directs that the service tax payable under section 66B of the Finance Act, 1994, on the service provided by an Indian Bank or other entity acting as an agent to the MTSO in relation to remittance of foreign currency from outside India to India, in the said period, but for the said practice, shall not be required to be paid.

(Himani Bhayana)  
Under Secretary to the Government of India  
[F.No. 137/51/2014-Service Tax]

## **20/2015-ST - Amendments in Notification No. 25/2012-ST**

**G.S.R.....(E).**- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 25/2012-Service Tax, dated the 20<sup>th</sup> June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20<sup>th</sup> June, 2012, namely:-

1. In the said notification,-

(i) in the opening paragraph, in entry 29, for clause (g), the following clauses shall be substituted, namely-

(g) business facilitator or a business correspondent to a banking company with respect to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking company's rural area branch, by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding;

(ga) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in clause (g);

(gb) business facilitator or a business correspondent to an insurance company in a rural area; or"

(ii) in paragraph 2,-

(a) after clause (g), the following clause shall be inserted, namely :-

(ga) Basic Savings Bank Deposit Account means a Basic Savings Bank Deposit Account opened under the guidelines issued by Reserve Bank of India relating thereto;"

(b) in clause (k), in sub-clause (ii), for the words "religion or spirituality", the words "religion, spirituality or yoga" shall be substituted.

**[F. No. 354/101/2015 -TRU]**

**(Santosh Kumar Mishra)**  
**Under Secretary to the Government of India**

**Note:-** The principal notification was published in the Gazette of India, Extraordinary, by notification No. 25/2012 - Service Tax, dated the 20<sup>th</sup> June, 2012, *vide* number G.S.R. 467 (E), dated the 20<sup>th</sup> June, 2012 and last amended *vide* notification No. 12/2015 - Service Tax, dated the 30<sup>th</sup> April, 2015 *vide* number G.S.R. 348(E), dated the 30<sup>th</sup> April, 2015.

**21/2015-ST – Swachh Bharat Cess (SBC)**

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

**[F.No. 354/129/2015 - TRU]**

**(K Kalimuthu)**  
**Under Secretary to the Government of India**

## **22/2015 - ST – SBC Exemption**

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

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

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

**[F.No. 354/129/2015 - TRU]**

**(K. Kalimuthu)**  
**Under Secretary to the Government of India**

**23 /2015- Amendments in Notification No. 22/2015-ST**

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

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



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

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

**[F.No. 354/129/2015 - TRU]**

**(K. Kalimuthu)**

**Under Secretary to the Government of India**

#### **24 /2015-ST – RCM applicable for SBC**

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

**[F.No. 354/129/2015 - TRU]**

**(K. Kalimuthu)**

## **Under Secretary to the Government of India**

### **25/2015-ST – Service Tax (Amendment) Rules**

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

1. (1) These rules may be called the Service Tax (Second Amendment) Rules, 2015.

(2) They shall come into force on the 15<sup>th</sup> day of November, 2015.

2. In the Service Tax Rules, 1994, in rule 6, after sub-rule (7C), the following sub-rule shall be inserted, namely:-

(7D) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by 0.5 and dividing the product by 14

(fourteen), during any calendar month or quarter, as the case may be, towards the discharge of his liability for Swachh Bharat Cess instead of paying Swachh Bharat Cess at the rate specified in sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015) read with notification No.22/2015-Service Tax, dated the 6<sup>th</sup> November, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 843 (E), dated the 6<sup>th</sup> November, 2015, and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.”

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

**[F.No. 354/129/2015 - TRU]**

**(K. Kalimuthu)**

**Under Secretary to the Government of India**

Note.--The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) by notification No. 2/94-Service Tax, dated the 28<sup>th</sup> June, 1994 vide number G.S.R. 546 (E), dated the 28<sup>th</sup> June, 1994 and last amended by notification No. 05/2015 – Service Tax, dated the 1st March, 2015, published in the Gazette of India, Extraordinary, vide number G.S.R. 159(E), dated the 1st March, 2015

### **26/2015-ST – Service Tax (Third Amendment) Rules, 2015**

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

1. (1) These rules may be called the Service Tax (Third Amendment) Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Service Tax Rules, 1994, in rule 6, in sub-rule (1), after the third proviso, the following shall be inserted, namely:-

"Provided also that in the case of an assessee in the State of Tamil Nadu, the service tax payable for the month of November, 2015, shall be paid to the credit of the Central Government by the 20<sup>th</sup> day of December, 2015 ".

(Himani Bhayana)

Under Secretary to the Government of India

[F.No. 137/78/2015-Service Tax]

Note:- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-SERVICE TAX, dated the 28th June, 1994 vide number G.S.R. 546 (E), dated the 28<sup>th</sup> June, 1994 and last amended vide notification No. 25/2015-SERVICE TAX, dated the 12<sup>th</sup> November, 2015 vide number G.S.R. 855 (E), dated the 12<sup>th</sup> November, 2015.

### **27/2015-ST – Service Tax (Fourth Amendment) Rules, 2015**

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

1. (1) These rules may be called the Service Tax (Fourth Amendment) Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Service Tax Rules, 1994, in rule 6, in sub-rule (1), in the fourth proviso, for the words "State of Tamil Nadu", the words "State of Tamil Nadu and the Union Territory of Puducherry (except Mahe & Yanam)" shall be substituted.

[F.No. 137/78/2015-Service Tax]

(Himani Bhayana)

Under Secretary to the Government of India

Note:- The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 2/94-SERVICE TAX, dated the 28th June, 1994 vide number G.S.R. 546 (E), dated the 28th June, 1994 and last amended vide notification No. 26/2015-SERVICE TAX, dated the 9th December, 2015 vide number G.S.R. 948 (E), dated the 9th December, 2015.

### **01/2016- ST - Amendment to Notification No. 41/2012-ST**

In exercise of the powers conferred by section 93A of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 41/2012 – Service Tax, dated the 29th June, 2012, published in the Gazette of India, Extraordinary, vide number G.S.R. 519(E), dated the 29th June, 2012, namely:-

In the said notification,-

(a) in the Explanation,-

(I) In clause (A), for sub-clause (i), the following sub-clause shall be substituted, namely:-

"(i) in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;"

(II) clause (B) shall be omitted;

(b) in the Schedule of rates, in column (4),-

(i) for the figures "0.04", wherever they occur, the figures "0.05" shall be substituted;

(ii) for the figures "0.06", wherever they occur, the figures "0.07" shall be substituted;

(iii) for the figures "0.08", wherever they occur, the figures "0.09" shall be substituted;

(iv) for the figures "0.12", wherever they occur, the figures "0.14" shall be substituted;

(v) for the figures "0.18", wherever they occur, the figures "0.21" shall be substituted; and

(vi) for the figures "0.20", wherever they occur, the figures "0.23" shall be substituted.

**[F. No. 332/18/2015-TRU ]**

**(K Kalimuthu)**  
**Under Secretary to the Government of India**

**Note:** The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 41/2012 – Service Tax, dated the 29th June, 2012 vide number G.S.R. 519(E), dated the 29th June, 2012.

**02/2016- ST – Amendment to Notification No. 12/2013-ST**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2013 – Service Tax, dated the 1st July, 2013, published in the Gazette of India, Extraordinary, vide number G.S.R. 448(E), dated the 1st July, 2013, namely:-

In the said notification, in paragraph 3, in sub-paragraph (III), after clause (b), the following clause shall be inserted, namely:-

""(ba) the SEZ Unit or the Developer shall be entitled to -

i. refund of the Swachh Bharat Cess paid on the specified services on which ab-initio exemption is admissible but not claimed; and

ii. the refund of amount as determined by multiplying total service tax distributed to it in terms of clause (a) by effective rate of Swachh Bharat Cess and dividing the product by rate of service tax specified in section 66B of the Finance Act, 1994."".

[F No. 332/18/2015-TRU ]

(K Kalimuthu)

Under Secretary to the Government of India

Note. - The principal notification was published in the Gazette of India, Extraordinary, by notification No. 12/2013 – Service Tax, dated the 1st July, 2013, vide number G.S.R. 448 (E), dated the 1st July, 2013 and last amended by notification No. 7/2014 – Service Tax, dated the 11th July, 2014 vide number G.S.R. No. 476(E), dated the 11th July, 2014.

### **03/2016- ST – Rebate of Swachh Bharat Cess**

In exercise of the powers conferred by rule 6A of the Service Tax Rules, 1994, the Central Government, hereby makes following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 39/2012 – Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, vide number G.S.R. 481(E), dated the 20th June, 2012, namely:-

In the said notification, in Explanation 1, after clause (c), the following clause shall be inserted, namely:-

*“(d) Swachh Bharat Cess as levied under sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015).”*

**[F. No. 332/18/2015-TRU ]**

**(K Kalimuthu)**  
**Under Secretary to the Government of India**

**Note:** The principal notification was published in the gazette of India, Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 39/2012 – Service Tax, dated the 20th June, 2012 vide number G.S.R. 481(E), dated the 20th June, 2012.

**04/2016 – ST - Annual Information Return**

In exercise of the powers conferred by section 15A, read with section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94, read with section 83 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules , namely:-

**1. Short title and commencement** .- (1) These rules may be called the Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016.

(2) They shall come into force from the 1 st day of April, 2016.

**2. Definitions** .-(1) In these rules, unless the context otherwise requires,-

(a) "Aggregate value of clearances" has the same meaning as assigned to it in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 9/2003-Central Excise dated the 1 st March 2003, published vide number G.S.R. 139, dated the 1 st March , 2003;



(b) "Board" means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963);

(c) "Digital signature" has the same meaning as assigned to it in the Information Technology Act, 2000 ( 21 of 2000);

(d) "Form" means Form appended to these rules.

(2) Words and expressions used herein and not defined but defined in the Finance Act, 1994(32 of 1994) and the Central Excise Act, 1944(1 of 1944) and the rules made thereunder, shall have the meanings respectively assigned to them in those Acts and rules.

**3. Annual information return to be furnished** .-The information return required to be furnished under sub-section (1) of section 15A of Central Excise Act, 1944 shall be furnished annually by every person mentioned in column (2) of the Table below in respect of all transactions of the nature and value specified in the corresponding entry in column (3) of the said Table, recorded or received by him during every financial year beginning on or after the 1 st day of April, 2015, in the Form AIRF, along with the Annexure to the said Form,as specified in column(4) of the said Table, namely:-

**Table**

<b><u>Sl No.</u></b>	<b><u>Class of person</u></b>	<b><u>Nature and value of transaction</u></b>	<b><u>Anne xure to Form AIRF</u></b>
<b><u>( 1 )</u></b>	<b><u>(2)</u></b>	<b><u>(3)</u></b>	<b><u>(4)</u></b>
1	An officer of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934, who is duly authoris	Details of foreign remittances for the receipt of services declared under purpose codes, namely, S0017,S0205,S0207,S0211,S0213,S0402,S0403,S0404,S0502,S0602,S0603,S0604,S0701,S0702, S0703,S0801,S0802,S0803,S0804,S0901,S1002,S1003,S1005,S1006,S1007,S1008,S1009,S1101 for such entities whose value of remittances aggregates to more than fifty lakh rupees in a financial year to which the return pertains.	AIRA-I

	ed by the Reserve Bank of India in this behalf.		
2	An officer of a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act 2003, or any other entity entrusted with such functions by the Central Government or State Government, who is duly authorised by such State Electricity Board or an	Electricity consumed by such manufacturers, using an induction furnace or rolling mill to manufacture goods falling under Section XV of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) whose aggregate value of clearances exceeds one hundred and fifty lakh rupees in the financial year to which the return pertains, as identified and intimated to him by the Principal Chief Commissioner or the Chief Commissioner of Central Excise and Service Tax in-charge of the Central Excise or Service Tax Zone, by the 30 th June of the subsequent financial year.	AIRA-II

<u>electricity distribution or transmission licensee or other entity, as the case may be.</u>		
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**4. Time for furnishing information return** .-The information return referred to in rule 3 shall be-

(a) filed on or before the 31 st of December of the financial year following the financial year to which the return pertains:

Provided that the Board,may, by way of an order, extend the date for filing such return for reasons to be recorded in writing in such order;

(b) filed electronically, in Form AIRF,along with the Annexure of this Form,to the Directorate General of Systems and Data Management:

Provided that the Board, may by way of an order, designate an officer in the office of the Directorate General of Systems and Data Management, or any other officer or agency to receive the returns and may appoint an officer designated as the Annual Information Return-Administrator, not below the rank of the Commissioner of Central Excise and Service Tax, for the purposes of day to day administration of furnishing of the said information return including specification of the procedures, data structure, formats and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies:

Provided further that till such time as the Board designates such an officer or agency for receiving the said information returns in the electronic format, or till such time the Annual Information Return-Administrator finalises the formats and standards for secure capture and transmission of data, the said returns may be filed in a computer readable media beinga Compact Disc-Read Only Memory (CD-ROM) or a Digital Video Disc(DVD);

(c) signed and verified by the person referred to in column(2) of the Table in rule 3.

**FORM AIRF**

[Return under Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016]

**Annual Information Return**

(Please read the instructions carefully before filling up the relevant columns)

**1.**

Name of the person (in block letters)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
---------------------------------------	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

**2 . Address (in block letters) (Please leave one blank box between two words.)**

(i) Name of Premises / Building

-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

(ii) Flat/Door/Block No.

-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

(iii) Road/Street/Lane

-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

(iv) Village / Area / Lane

-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

(v) Block/Taluk/Sub-Division/Town

-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

(vi) Post office

(vii) City/District

-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

(viii) State/Union territory

Name	Code
-	-

(ix) PIN

(x) Telephone Nos:

(xi) Mobile No.

(xii) [E-mail Address](#)

**3.**

<a href="#">Financial Year (transactions relating to which are reported)</a>	-	-	-	-	-	-	-	-	-
------------------------------------------------------------------------------	---	---	---	---	---	---	---	---	---

**4.**

<a href="#">Class of person</a>	-
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([Dropdown menu showing all the class of persons](#))

**5 .** [Details as per formats enclosed:Annexure AIRA-I and Annexure AIRA-II](#)

**6 .** [Verification.-](#)

[I .....\(full name in block letters\), son/daughter of ..... hereby, solemnly, declare that the information given in this return is true, correct and complete in every respect. I further declare that I am authorised to sign this return and verify it.](#)

[\(Name of the Assessee or Authorised signatory\)](#)

[Designation in the organisation:](#)

[Place:](#)

[Date:](#)

**[Annexure AIRA-1](#)**

**[FOR RESERVE BANK OF INDIA](#)**

<a href="#">Sr. No</a>	<a href="#">Purpose code</a>	<a href="#">Name of remitter</a>	<a href="#">Address of remitter</a>	<a href="#">PAN of remitter</a>	<a href="#">Total amount of remittances in a financial year</a>			<a href="#">Name of remitter</a>	<a href="#">Address of remitter</a>
					<a href="#">Foreign currency (Currency name and amount)</a>		<a href="#">Indian rupee (Amount only)</a>		
					<a href="#">Name</a>	<a href="#">Amount</a>			
-	-	-	-	-	-	-	-	-	-

**[Annexure AIRA-II](#)**

**[FOR ELECTRICITY COMPANIES](#)**

<u>Sr.No.</u>	<u>Consumer number</u>	<u>Name of consumer</u>	<u>Address of consumer</u>	<u>Central Excise registration number as intimated by Chief Commissioner of Central Excise</u>	<u>Total number of units of electricity consumed in whole year</u>
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-

### **INSTRUCTIONS FOR FILING ANNUAL INFORMATION RETURN**

1. All entries in the columns are required to be made in BLOCK letters.
2. One box must be left blank between two words.
3. For State/Union territory Code in item (viii) in serial number 2

<u>Codes</u>	<u>Name of State</u>	<u>Codes</u>	<u>Name of State</u>
<u>01.</u>	<u>ANDMAN AND NICOBAR ISLANDS</u>	<u>19.</u>	<u>MAHARASHTRA</u>
<u>02.</u>	<u>ANDHRA PRADESH</u>	<u>20.</u>	<u>MANIPUR</u>
<u>03.</u>	<u>ARUNACHAL PRADESH</u>	<u>21.</u>	<u>MEGHALAYA</u>
<u>04.</u>	<u>ASSAM</u>	<u>22.</u>	<u>MIZORAM</u>
<u>05.</u>	<u>BIHAR</u>	<u>23.</u>	<u>NAGALAND</u>
<u>06.</u>	<u>CHANDIGARH</u>	<u>24.</u>	<u>ORISSA</u>
<u>07.</u>	<u>DADRA AND NAGAR HAVELI</u>	<u>25.</u>	<u>PONDICHERRY</u>
<u>08.</u>	<u>DAMAN AND DIU</u>	<u>26.</u>	<u>PUNJAB</u>
<u>09.</u>	<u>DELHI</u>	<u>27.</u>	<u>RAJASTHAN</u>
<u>10.</u>	<u>GOA</u>	<u>28.</u>	<u>SIKKIM</u>
<u>11.</u>	<u>GUJARAT</u>	<u>29.</u>	<u>TAMIL NADU</u>
<u>12.</u>	<u>HARYANA</u>	<u>30.</u>	<u>TRIPURA</u>
<u>13.</u>	<u>HIMACHAL PRADESH</u>	<u>31.</u>	<u>UTTAR PRADESH</u>
<u>14.</u>	<u>JAMMU AND KASHMIR</u>	<u>32.</u>	<u>WEST BENGAL</u>
<u>15.</u>	<u>KARNATAKA</u>	<u>33.</u>	<u>CHHATISGARH</u>
<u>16.</u>	<u>KERALA</u>	<u>34.</u>	<u>UTTARANCHAL</u>
<u>17.</u>	<u>LAKSHWADEEP</u>	<u>35.</u>	<u>JHARKHAND</u>
<u>18.</u>	<u>MADHYA PRADESH</u>	<u>36.</u>	<u>TELANGANA</u>

4. For item at serial number 4, "Class of person" means the person referred in column 2 of the Table in rule 3 of the Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016.

**[F.No.137/23/2015-ServiceTax]**

**(Himani Bhayana)**  
**Under Secretary to the Government of India**

### **05/2016 – ST – Amendment in exemption of SBC**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification No. 22/2015-Service Tax dated the 6th November, 2015, published vide G.S.R. 843 (E), dated the 6th November, 2015, namely:-

In the said notification, in the first proviso, for the words, brackets and figure "notification issued under sub-section (1)", the words, brackets and figures "notification or special order issued under sub-section (1) or as the case may be under sub-section (2)" shall be substituted.

(F. No. 137/79/2015-Service Tax)

(Himani Bhayana)

Under Secretary to the Government of India

Note: The principal notification was published in the Gazette of India Extraordinary, dated the 6th November 2015 vide number G.S R 843 (E) dated the 6th November, 2015 and was last amended by notification No. 23/2015-Service Tax, dated the 12th November, 2015 published vide number G.S.R 853 (E), dated the 12th November 2015.

**6/2016 – ST – Effective date for amendment in Section 66D(a)(iv)**

In exercise of the powers conferred by section 109 of the Finance Act, 2015 (No. 20 of 2015), the Central Government hereby appoints the 1 st day of April, 2016 as the date on which the provisions of sub-section (1) of section 109 of the said Act shall come into effect.

**[F. No. B-1/10/2015 - TRU]**

**(K Kalimuthu)**  
**Under Secretary to the Government of India**



## **07/2016 – ST – Exemption from RCM for 'Support Services'**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20th June, 2012, namely:-

1. In the said notification, in the opening paragraph,

(i) after entry No. 47, the following shall be inserted, namely-

"(48) Services provided by Government or a local authority to a business entity with a turnover up to rupees ten lakh in the preceding financial year."

2. The amendment shall come into effect on 1 st April, 2016.

[F. No. B1/10/2015-TRU]

(K Kalimuthu)

Under Secretary to the Government of India

Note:- The principal notification was published in the Gazette of India, Extraordinary, by notification No. 25/2012 - Service Tax, dated the 20th June, 2012, vide number G.S.R. 467 (E), dated the 20th June, 2012 and last amended by notification No.20/2015 - Service Tax, dated the 21 st October, 2015 vide number G.S.R. 799(E), dated the 21 st October, 2015.

**08/2016 – ST - Amendment to Notification No.26/2012-ST**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.26/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 468 (E), dated the 20th June, 2012, namely:-

1. In the said notification,

(a) in the first paragraph, in the TABLE, -

(i) for Sl. No. 2 and the entries relating thereto, the following shall be substituted, namely :-

<b><u>(1)</u></b>	<b><u>(2)</u></b>	<b><u>(3)</u></b>	<b><u>(4)</u></b>
<u>"2</u>	<u>Transport of goods by rail (other than service specified at Sl. No. 2A below)</u>	<u>30</u>	<u>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.";</u>

(ii) after Sl. No. 2 and the entries relating thereto, the following serial number and entries relating thereto shall be inserted, namely :-

<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
"2A	<u>Transport of goods in containers by rail by any person other than Indian Railways</u>	40	<u>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."</u> ;

(iii) against Sl.No. 3, in column (4), for the entry, the following shall be substituted, namely:-

"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.";

(iv) against Sl. No. 7, in column (2), for the entry, the following shall be substituted, namely :-

"Services of goods transport agency in relation to transportation of goods other than used household goods.";

(v) after Sl. No. 7 and the entries relating thereto, the following serial numbers and entries relating thereto shall be inserted, namely :-

<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
"7A	<u>Services of goods transport agency in relation to transportation of used household goods.</u>	40	<u>CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.</u>
8	<u>Services provided by a foreman of chit fund in relation to chit</u>	70	<u>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."</u> ;

(vi) against Sl. No. 9A, in column (2), after item (b) and the entry relating thereto, the following item and entry relating thereto shall be inserted with effect from 1st June, 2016, namely :-

"(c) a stage carriage";

(vii) against Sl. No. 10, in column (4), for the entry, the following shall be substituted, namely :-

"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."

(viii) for Sl. No. 11 and the entries relating thereto, the following shall be substituted, namely:-

<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>
<u>"11</u>	<u>Services by a tour operator in relation to,-</u>  <u>(i) a tour, only for the purpose of arranging or booking accommodation for any person</u>	<u>10</u>	<u>(i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.</u>  <u>(ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation.</u>  <u>(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, includes only the service charges for arranging or booking accommodation for any person but does not include the cost of such accommodation.</u>
	<u>(ii) tours other than (i) above</u>	<u>30</u>	<u>(i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.</u>  <u>(ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour and the amount charged in the bill is the gross amount charged for such a tour."</u>

(ix) for Sl. No. 12 and the entries relating thereto, the following shall be substituted, namely:-

(1)	(2)	(3)	(4)
"12	<u>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</u>	30	<u>(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.</u>  <u>(ii) The value of land is included in the amount charged from the service receiver."</u> ;

(b) in the Explanation, after paragraph B, the following paragraph shall be inserted, namely:-

"BA. For the purposes of exemption at Serial number 9, the amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods (including fuel) 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:

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

(c) in the paragraph 2, the clause 'b' shall be omitted.

2. Save as otherwise provided, this notification shall come into force on the 1st April, 2016.

**[F.No. 334/8/2016 - TRU]**

**(K Kalimuthu)**  
**Under Secretary to the Government of India**

**Note:** - The principal notification No. 26/2012 - Service Tax, dated 20th June, 2012, was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) vide number G.S.R. 468 (E), dated the 20th June, 2012 and was last amended by notification No.13/2015 - Service Tax, dated the 19th May, 2015, vide G.S.R. 397(E), dated the 19th May, 2015.

### **09/2016 – ST - Amendment to Notification No. 25/2012-ST**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.25/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 467 (E), dated the 20th June, 2012, namely:-

1. In the said notification,-

(a) in the first paragraph,-

(i) in entry 6, for clause (b) and clause (c), the following clauses shall be substituted, namely,-

"(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, 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 senior advocate by way of legal services to a person other than a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;";

(ii) after entry 9A, the following entry shall be inserted with effect from 1st March, 2016, namely, -

"9B. Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme, -

(a) two year full time residential Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by Indian Institute of Management;

(b) fellow programme in Management;

(c) five year integrated programme in Management.";

(iii) after entry 9B as so inserted, the following entries shall be inserted, namely: -

"9C. services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under Skill Development Initiative (SDI) Scheme;

9D. services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by National Council For Vocational Training.";

(iv) after entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely-

"12A. 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 structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;";

(v) in entry 13, after item (b), the following items shall be inserted with effect from 1st March, 2016, namely –

"(ba) a civil structure or any other original works pertaining to the 'In-situ rehabilitation of existing slum dwellers using land as a resource through private participation"under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers.

(bb) a civil structure or any other original works pertaining to the 'Beneficiary-led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;";

(vi) in entry 14, with effect from 1st March, 2016,

A. for item (a), the following shall be substituted, namely:-

"(a) railways, excluding monorail and metro;

Explanation. - The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt."

B. after item (c), the following item shall be inserted, namely –

"(ca) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:

(i) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;

(ii) any housing scheme of a State Government."

(vii) after entry 14, with effect from the 1st March, 2016, the following entry shall be inserted, namely-



"14A. Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port provided under a contract which had been entered into prior to 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that Ministry of Civil Aviation or the Ministry of Shipping in the Government of India, as the case may be, certifies that the contract had been entered into before the 1st March, 2015:

provided further that nothing contained in this entry shall apply on or after the 1st April, 2020;";

(viii) in entry 16, for the words "one lakh rupees", the words "one lakh and fifty thousand rupees" shall be substituted;

(ix) in entry 23,-

(A) after clause (b), the following clause shall be inserted with effect from 1st June 2016, namely,-

"(bb) stage carriage other than air-conditioned stage carriage;";

(B) clause (c) shall be omitted;

(x) in entry 26, after clause (p), the following clause shall be inserted, namely,-

"(q) Niramaya" Health Insurance Scheme implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).";

(xi) after entry 26B, the following entry shall be inserted, namely,-

"26C. Services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory And Development Authority Act, 2013 (23 of 2013);" ;

(xii) after entry 48, the following entries shall be inserted, namely,-

"49. Services provided by Employees' Provident Fund Organisation (EPFO) to persons governed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952);

50. Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999);

51. Services provided by Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market;

52. Services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination;";

(xiii) after entry 52 as so inserted, the following entries shall be inserted with effect from 1st June 2016, namely:-

"53. Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.";

(b) in paragraph 2, -

(i) after clause (b), the following clause shall be inserted with effect from such date on which the Finance Bill, 2016 receives assent of the President of India, namely: -

'(ba) "approved vocational education course" means, -

(i) 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 notified under the Apprentices Act, 1961 (52 of 1961); or

(ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship;';

(ii) for clause (oa), the following shall be substituted with effect from such date on which the Finance Bill, 2016, receives assent of the President of India, namely : -

'(oa) "educational institution" means an institution providing services by way of:

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;";

(iii) after clause (zd), the following clause shall be inserted, namely:-

'(zdd) "senior advocate" has the meaning assigned to it in section 16 of the Advocates Act, 1961 (25 of 1961);'

2. Save as otherwise provided in this notification, this notification shall come into force on the 1st of April, 2016.

[F. No.334/8/2016 -TRU]

(K Kalimuthu)

Under Secretary to the Government of India

Note: - The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 25/2012 - Service Tax, dated the 20th June, 2012, vide number G.S.R. 467 (E), dated the 20th June, 2012 and last amended vide notification number 07/2016 - Service Tax, dated the 18th February, 2016 vide number G.S.R. 184(E), dated the 18th February, 2016.

## **10/2016 – ST - Point of Taxation Rules**

In exercise of the powers conferred by clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely :-

1. (1) These rules may be called the Point of Taxation (Amendment) Rules, 2016.

(2) Save as otherwise provided in these rules, they shall come into force on the 1st day of March, 2016.

2. In the Point of Taxation Rules, 2011,-

(1) in the opening paragraph, after the words "powers conferred under", the word, letters and signs "sub-section (2) of section 67A and" shall be inserted with effect from the date of enforcement of the Finance Act, 2016.

(2) in rule 5, after clause (b), the following explanations shall be inserted, namely,-

"Explanation 1.- This rule shall apply mutatis mutandis in case of new levy on services.

Explanation 2.- New levy or tax shall be payable on all the cases other than specified above."

[F. No. 334/8/2016-TRU]

(K Kalimuthu)

Under Secretary to the Government of India

Note. - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 18/2011 – Service Tax, dated the 1st of March, 2011 vide number G.S.R. 175(E) dated the 1st of March, 2011 and last amended vide notification No. 13/2014 - Service Tax dated 11th July, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), by number G.S.R. 482(E), dated the 11th July, 2014.

### **11/2016 – ST - Exemption on Sale of Software**

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), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts service in relation to Information Technology Software (hereinafter referred to as such services) leviable to service tax under section 66B read with section 66E of the said Act when such Information Technology Software is recorded on a media (hereinafter referred to as such media) under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), on which it is required, under the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force, to declare on package of such media thereof, the retail sale price, from whole of the service tax subject to the condition that -

(i) the value of the package of such media domestically produced or imported, for the purposes of levy of the duty of central excise or the additional duty of customs leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), if imported, as the case may be, has been determined under section 4A of the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as such value); and

(ii) (a) the appropriate duties of excise on such value have been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of such media manufactured in India; or

(b) the appropriate duties of customs including the additional duty of customs on such value, have been paid by the importer in respect of such media which has been imported into India;

(iii) a declaration made by the service provider on the invoice relating to such service that no amount in excess of the retail sale price declared on such media has been recovered from the customer.

Explanations. - For the purpose of this notification, the expression,-

(i) "appropriate duties of excise" shall mean the duties of excise leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) and a notification, for the time being in force, issued in accordance with the provision of sub-section (1) of section 5A of the said Central Excise Act; and

(ii) "appropriate duties of customs" shall mean the duties of customs leviable under section 12 of the Customs Act, 1962 (52 of 1962) and any of the provisions of the Customs Tariff Act, 1975 (51 of 1975) and a notification, for the time being in force, issued in accordance with the provision of sub-section (1) of section 25 of the said Customs Act.

[F. No. 334/8/2016-TRU]

(K Kalimuthu)

Under Secretary to the Government of India

### **12/2016 – ST - Amendment to Notification No. 32-2012-ST**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.32/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 474(E), dated the 20th June, 2012, namely:-

1. In the said notification,-

(1) in the opening paragraph,-

(a) after the words "Department of Science and Technology, Government of India", the following words shall be inserted, namely:-

"or bio-incubators recognized by the Biotechnology Industry Research Assistance Council, under Department of Biotechnology, Government of India,";

(b) in conditions 1 and 2, after the words and letters "or the TBI", the words "or the bio-incubator" shall be inserted;

(2) in Format-I,-

(a) in the heading, after the word and letters "the STEP", the words "or the Bio-Incubator" shall be added;

(b) in item (a), after the word "Park", the words and signs "/bio-incubator" shall be inserted;

(3) in Format-II,-

(a) in the heading, after the letters "STEP", the signs and words "/the Bio-Incubator" shall be inserted;

(b) in serial number 4, after the letters, brackets and word "STEP (incubator)", the signs and words "/the bio-incubator" shall be inserted.

2. This notification shall come into force on the 1st of April, 2016.

[F. No. 334/8/2016-TRU]

(K Kalimuthu)

Under Secretary to the Government of India

Note. - The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), by notification No. 32/2012 – Service Tax dated the 20th June, 2012 vide number G.S.R. 474(E) dated the 20th June, 2012.



### **13/2016 – ST - Interest Rates Revised**

In exercise of the powers conferred by section 75 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification No. 12/2014-Service Tax, dated the 11th July, 2014, published in the Gazette of India, Extraordinary, vide number G.S.R. 482 (E), dated the 11th July, 2014, except as respects things done or omitted to be done before such supersession, the Central Government hereby, for delayed payment of any amount as service tax in the situation mentioned in column (2) of the Table below, fixes the rate of simple interest per annum mentioned in the corresponding entry in the column (3) of the said Table:-

<b><u>Serial Number</u></b>	<b><u>Situation</u></b>	<b><u>Rate of simple interest</u></b>
<b><u>(1)</u></b>	<b><u>(2)</u></b>	<b><u>(3)</u></b>
<u>1.</u>	<u>Collection of any amount as service tax but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due.</u>	<u>24 per cent.</u>
<u>2.</u>	<u>Other than in situations covered under serial number 1 above.</u>	<u>15 per cent.</u>

2. This notification shall come into force on the day the Finance Bill, 2016 receives the assent of the President.

**[F. No. 334/8/2016-TRU]**

**(K Kalimuthu)**  
**Under Secretary to the Government of India**

### **14/2016 – ST - Interest Rates - Section 73B**

In exercise of the powers conferred by section 73B of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.8/2006-Service Tax, dated the 19th April, 2006, published in the Gazette of India, Extraordinary, vide number G.S.R. 224 (E), dated the 19th April, 2006, namely:-

In the said notification, for the words "eighteen per cent.", the words "fifteen per cent." shall be substituted.

2. This notification shall come into force on the day the Finance Bill, 2016 receives the assent of the President.

**[F. No. 334/8/2016-TRU]**

**(K Kalimuthu)**  
**Under Secretary to the Government of India**

**Note: -** The principal notification No. 8/2006-Service Tax, dated the 19th April, 2006 was published in the Gazette of India, Extraordinary, vide number G.S.R. 224 (E), dated the 19th April, 2006 and last amended by notification No. 15/2011-Service Tax, dated the 1st March, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 172 (E), dated the 1st March, 2011.

**15/2016 – ST - Deletion of word 'Support Service'**

In exercise of the powers conferred by clause (h) of section 107 of the Finance Act, 2015 (20 of 2015), the Central Government hereby appoints 1st day of April, 2016, as the date on which the provision of said clause shall come into force.

[F. No. 334/08/2016 - TRU]

(K Kalimuthu)

Under Secretary to the Government of India

**16/2016 – ST - Effective Date for Notification No. 5/2015-ST**

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, hereby appoints 1st day of April, 2016 as the date from which the provisions of clause(b) of sub-paragraph (i) of paragraph 1 of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 07/2015 – Service Tax, dated the 1st March, 2015, published in the Gazette of India, Extraordinary, vide number G.S.R. 161(E), dated the 1st March, 2015, shall come into force.

**[F. No.334/08/2016-TRU]**

**(K Kalimuthu)**  
**Under Secretary to the Government of India**

**17/2016 – ST - Effective Date for Notification No. 7/2015-ST**

In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby appoints 1st day of April, 2016 as the date from which the provisions of sub-clause (II) of clause (iii) of sub-paragraph (a) of paragraph 2 of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 05/2015 – Service Tax, dated the 1st March, 2015, published in the Gazette of India, Extraordinary, vide number G.S.R. 159(E), dated the 1st March, 2015, shall come into force.

**[F. No.334/08/2016-TRU]**

**(K Kalimuthu)**  
**Under Secretary to the Government of India**

## **18/2016 – ST - Amendment to Notification No. 30/2012-ST**

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.30/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012, namely:-

1. In the said notification,-

(a) in paragraph I, in clause (A),-

(i) sub-clause (ib) shall be omitted;

(ii) for sub-clause (ic), the following shall be substituted, namely:-

*"(ic) provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998);"*

(iii) in sub-clause (iv), for item (B), the following shall be substituted, namely:-

*"(B) a firm of advocates or an individual advocate other than senior advocate, by way of legal services, or";*

(b) in paragraph (II), in the TABLE,-

(i) Sl. No. 1B and the entries relating thereto shall be omitted;

(ii) against Sl. No. 1C, for the entry under column (2), the following shall be substituted, namely:-

*"in respect of services provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998)";*

(iii) against Sl. No. 5, for the entry under column (2), the following shall be substituted, namely:-

*"in respect of services provided or agreed to be provided by a firm of advocates or an individual advocate other than a senior advocate by way of legal services";*

(iv) against Sl. No. 6, in column (2), the words "by way of support services" shall be omitted.

2. This notification shall come into force on the 1st day of April, 2016.

**[F.No. 334 /08/ 2016-TRU]**

**(K Kalimuthu)**  
**Under Secretary to the Government of India**

**Note:** - The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 30/2012 - Service Tax, dated the 20th June, 2012, vide number G.S.R. 472 (E), dated the 20th June, 2012 and last amended vide notification No. 7/2015-Service Tax, dated the 1st March, 2015 vide number G.S.R. 161(E), dated the 1st March, 2015.

## 19/2016 – ST - Amendment to Service Tax Rules, 1994

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

1. (1) These rules may be called the Service Tax (Amendment) Rules, 2016.

(2) These rules shall come into force on the 1st day of April, 2016.

2. In the Service Tax Rules, 1994,-

(1) in rule 2, in sub-rule (1), in clause (d), in sub-clause(i),-

(a) in item (D), for sub-item(II),the following shall be substituted, namely:-

*"(II) a firm of advocates or an individual advocate other than a senior advocate by way of legal services";*

(b) item (EEA) shall be omitted;

(2) in rule 6,-

(i) in sub-rule (1),-

(a) in the first proviso, for the words "assessee is an individual or proprietary firm or partnership firm", the following shall be substituted,-

*"assessee is a one person company whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, or is an individual or proprietary firm or partnership firm or Hindu Undivided Family";*

(b) in the third proviso, for the words "in case of individuals and partnership firms whose", the following words shall be substituted,-

*"in case of such individuals, partnership firms and one person companies whose";*



(ii) in sub-rule (4), for the words, brackets and figures "Central Excise (No. 2) Rules, 2001", the words and figures "Central Excise Rules, 2002" shall be substituted;

(iii) in sub-rule (7A), after clause (i), the following clause shall be inserted, namely:-

"(ia) in case of single premium annuity policies other than (i) above, 1.4 per cent. of the single premium charged from the policy holder;";

(3) in rule 7,-

(i) after sub-rule (3), the following sub-rules shall be inserted, namely:-

"(3A) Notwithstanding anything contained in sub-rule (1), every assessee shall submit an annual return for the financial year to which the return relates, in such form and manner as may be specified in the notification in the Official Gazette by the Central Board of Excise and Customs, by the 30th day of November of the succeeding financial year;

(3B) The Central Government may, subject to such conditions or limitations, specify by notification an assessee or class of assesses who may not be required to submit the annual return referred to in sub-rule(3A).";

(ii) in sub-rule (4), for the words, brackets and figure "sub-rule (2)", the words, brackets, figures and letter "sub-rules (2) and (3A)" shall be substituted;

(4) rule 7B shall be renumbered as sub-rule (1) thereof, and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

"(2) An assessee who has filed the annual return referred to in sub-rule (3A) of rule 7 by the due date may submit a revised return within a period of one month from the date of submission of the said annual return.";

(5) rule 7C shall be renumbered as sub-rule (1) thereof, and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

"(2) Where the annual return referred to in sub-rule (3A) of rule 7 is filed by the assessee after the due date, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day for the period of delay in filing of such return, subject to a maximum of twenty thousand rupees."

**[F.No. 334/08/2016- TRU]**

**(K Kalimuthu)**

**Under Secretary to the Government of India**

**Note:** - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) by notification No. 2/94-Service Tax, dated the 28th June, 1994 vide number G.S.R. 546 (E), dated the 28th June, 1994 and last amended vide notification No. 27/2015-Service Tax, dated the 18th December, 2015 vide number G.S.R. 987(E)., dated the 18th December, 2015.

## 14. CIRCULARS

### 160/11/2012 - APPLICABILITY OF EC and SHEC

#### **Circular No. 160/11/2012-ST**

F.No.334/1/2012-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)

\*\*\*\*\*

Room No. 153, North Block,  
New Delhi, 29<sup>th</sup> June, 2012.

To

Chief Commissioners of Customs and Central Excise (All)  
Chief Commissioners of Central Excise & Service Tax (All)  
Directors General of Service Tax/Central Excise Intelligence/Audit  
Commissioners of Central Excise & Service Tax (All)  
Commissioners of Service Tax (All)  
Commissioners of Customs and Central Excise (All)

Madam/Sir,

**Subject: Applicability of provisions of the Finance Act, 2004 relating to education cess and the Finance Act, 2007 relating to secondary and higher education cess-regarding.**

There has been some doubt regarding the applicability of provisions of the Finance Act, 2004 relating to education cess and the Finance Act, 2007 relating to secondary and higher education cess as the concerned Acts make reference to section 66 of the Finance Act, 1994, which shall cease to have effect from July 1, 2012. In this connection, as also in general, you may kindly refer to the sub-section (1) of section 8 of the General Clauses Act, 1897 which reads as under:

“Where this Act, or any Central Act or Regulation made after reference to the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted.”

Thus any reference to section 66 of the Finance Act, 1994 shall be construed as reference to the newly re-enacted provision i.e. section 66B of the same Act. Despite the stated position of law, the matter has been settled by the issue of Removal of Difficulties Order No. 2/2012 dated 29.06.2012.

2. This circular may be communicated to the field formations and service tax assesseees through Public Notice/Trade Notice. Hindi version would follow.

Yours faithfully,

(S. Jayaprahasam)  
Technical Officer (TRU)  
Tel/Fax: 011-23092037

## 161/12/2012 – Accounting code for Negative List

### **Circular No.161/12/2012 -ST**

F.No.341/21/2012-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
Tax Research Unit

153, North Block,  
New Delhi, 6<sup>th</sup> July, 2012

To  
Chief Commissioners of Customs and Central Excise (All),  
Chief Commissioners of Central Excise & Service Tax (All),  
Director General (Service Tax), Director General (Systems), Director  
General (Central Excise Intelligence), Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise (All) &  
Commissioners of Central Excise and Customs (All).

Madam/Sir,

**Subject: Accounting Code for payment of service tax under the Negative List approach to taxation of services, with effect from the first day of July 2012 - regarding.**

Negative List based comprehensive approach to taxation of services came into effect from the first day of July, 2012. For payment of service tax under the new approach, a new Minor Head - 'All taxable Services' has been allotted under the Major Head "0044-Service Tax".

2. Accounting codes for the purpose of payment of service tax under the Negative List approach, with effect from 1<sup>st</sup> July, 2012 is as follows:

Name of Services	Accounting codes			
	Tax collection	Other Receipts	Penalties	Deduct refunds
All Taxable Services	00441089	00441090	00441093	00441094

**NOTE:** (i) service specific accounting codes will also continue to operate, side by side, for accounting of service tax pertaining to the past period (meaning, for the period prior to 1<sup>st</sup> July, 2012); (ii) Primary Education Cess on all taxable services will be booked under 00440298 and Secondary and Higher Education Cess on all taxable services will be booked under 00440426; (iii) a new sub-head has been created for payment of "penalty"; the sub-head "other receipts" is meant only for payment of interest etc. leviable on delayed payment of service tax; (iv) the sub-head "deduct refunds" is not to be used by the assessee, as it is meant for use by the Revenue/Commissionerates while allowing refund of tax.

3. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge the receipt of this Circular. Hindi version follows.

(S. Jayaprahasam)  
Technical Officer  
Tel: 011-23092037

## **163/14/2012 - CLARIFICATION ON REMITTANCES**

### **Circular No. 163/ 14/2012 –ST**

F. No. 354/ 119/2012- TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
(Tax Research Unit)  
Room No 146, North Block, New Delhi-1,

Dated the 10th July 2012.

To

Chief Commissioner of Customs and Central Excise (All)

Chief Commissioner of Central Excise & Service Tax (All)

Director General of Service Tax

Director General of Central Excise Intelligence

Director General of Audit

Commissioner of Customs and Central Excise (All)

Commissioner of Central Excise and Service Tax (All)

Commissioner of Service Tax (All)

Madam/Sir,

#### **Subject: Clarification on service tax on remittances - regarding.**

Concerns have been expressed in various forums regarding the leviability of service tax on the remittance of foreign currency in India from overseas.

**2.** The matter has been examined and it is clarified that there is no service tax *per se* on the amount of foreign currency remitted to India from overseas. In the negative list regime, 'service' has been defined in clause (44) of section 65B of the Finance Act 1994, as amended, which excludes transaction in money. As the amount of remittance comprises money, the activity does not comprise a 'service' and thus not subjected to service tax.

**3.** In case any fee or conversion charges are levied for sending such money, they are also not liable to service tax as the person sending the money and the company conducting the remittance are located outside India. In terms of the Place of Provision of Services Rules, 2012, such services are deemed to be provided outside India and thus not liable to service tax.

**4.** It is further clarified that even the Indian counterpart bank or financial institution who charges the foreign bank or any other entity for the services provided at the receiving end, is not liable to service tax as the place of provision of such service shall be the location of the recipient of the service, i.e. outside India, in terms of Rule 3 of the Place of Provision of Services Rules, 2012.

**5.** This Circular may be communicated to the field formations and service tax assesseees, through Public Notice/ Trade Notice. Hindi version to follow.

### **164/15/2012 – CLARIFICATION ON VOCATIONAL EDUCATION**

**Circular No. 164/15/2012-ST**

F. No. 356/17 /2012 - TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)

153, North Block,  
New Delhi, 28<sup>th</sup> August, 2012

To  
Chief Commissioner of Customs and Central Excise / Central  
Excise & Service Tax (All)  
Director General of Service Tax /Central Excise Intelligence  
/Audit;  
Commissioner of Customs and Central Excise/ Central Excise and  
Service Tax/ Service Tax (All)

Madam/Sir,

**Subject: service tax – vocational education/training  
course -- regarding.**

Clarification has been sought in respect of levy of service tax on certain vocational education/training/ skill development courses (VEC) offered by the Government (Central Government or State Government) or local authority themselves or by an entity independently established by the Government under the law, as a society or any other similar body.

2. The issue has been examined. When a VEC is offered by an institution of the Government or a local authority, question of service tax does not arise. In terms of section 66D (a), only specified services provided by the Government are liable to tax and VEC is excluded from the service tax.
3. When the VEC is offered by an institution, as an independent entity in the form of society or any other similar body, service tax treatment is determinable by the application of either sub-clause (ii) or (iii) of clause (I) of section 66D of the Finance Act, 1994. Sub-clause (ii) refers to "qualification recognized by any law" and sub-clause (iii) refers to "approved VEC". In the context of VEC, qualification implies a Certificate, Diploma, Degree or any other similar Certificate. The words "recognized by any law" will include such courses as are approved or recognized by any entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC.



4. This Circular may be communicated to the field formations and service tax assesseees, through Public Notice/Trade Notice. Hindi version to follow.

Yours faithfully,

(S.Jayaprahasam)  
Technical Officer, TRU  
Tel/Fax: 011-23092037

## 165/16/2012 - CIRCULAR ON RESTORATION OF ACCOUNTING CODES

### Circular No.165/16/2012 -ST

F.No.341/21/2012-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
Tax Research Unit

146-F, North Block,  
New Delhi, 20<sup>th</sup> November, 2012

To

Chief Commissioners of Central Excise and Customs (All), Director General (Service Tax), Director General(Systems), Director General (Central Excise Intelligence), Director General (Audit), Commissioners of Service Tax (All), Commissioners of Central Excise (All), Commissioners of Central Excise and Customs (All)

Madam/Sir,

**Subject: Restoration of service specific accounting codes for payment of service tax - regarding.**

Negative List based comprehensive approach to taxation of services came into effect from the first day of July, 2012. Accounting code for the purpose of payment of service tax under the Negative List approach ["All Taxable Services" – 00441089] was prescribed vide Circular 161/12/2012 dated 6<sup>th</sup> July, 2012.

2. Subsequent to the issuance of the Circular, suggestions were received from the field formations that the service specific old accounting codes should be restored, for the purpose of statistical analysis; also it was suggested that list of descriptions of services should be provided to the taxpayers for obtaining registration. These suggestions were examined and a decision has been taken to restore the service specific accounting codes. Accordingly, a list of 120 descriptions of services for the purpose of registration and accounting codes corresponding to each description of service for payment of tax is provided in the annexure to this Circular.
3. Descriptions of taxable services given in the annexure are solely for the purpose of statistical analysis. On the advice of the office of the C & AG, a specific sub-head has been created for payment of "penalty" under various descriptions of services. Henceforth, the sub-head "other receipts" is meant only for payment of interest payable on delayed payment of service tax.

Accounting Codes under the sub-head “deduct refunds” is not to be used by the taxpayers, as it is meant for use by the field formations while allowing refund of tax.

4. Registrations obtained under the positive list approach continue to be valid. New taxpayers can obtain registrations by selecting the relevant description/s from among the list of 120 descriptions of services given in the Annexure. Where registrations have been obtained under the description ‘All Taxable Services’, the taxpayer should file amendment application online in ACES and opt for relevant description/s from the list of 120 descriptions of services given in the Annexure. If any applications for amendment of ST-1 are pending with field formations, seeking the description ‘all taxable services’, such amendment may not be necessary and the officers in the field formations may provide necessary guidance to the taxpayers in this regard. Directorate General of Systems will be making necessary arrangements for display of the list of 120 descriptions of services and their corresponding Accounting Codes in Form ST-1 and Form ST-2 as may be necessary.
  
5. Officers in the field formations are instructed to extend necessary guidance to the tax payers regarding the selection of appropriate description of taxable service and facilitate the payment of service tax/cess due under the appropriate accounting code. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge receipt of this Circular. Hindi version follows.

Click here > [Annexure](#) (nine pages)

(J.M.Kennedy)  
Director, TRU  
Tel: 011-23092634  
Email: [jm.kennedy@nic.in](mailto:jm.kennedy@nic.in)

Annexure

DESCRIPTIONS OF TAXABLE SERVICES AND ACCOUNTING CODES FOR PAYMENT OF SERVICE TAX

Sl No.	Finance Act,1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes			
			Tax Collection	Other Receipts (interest)	Penalties	Deduct Refunds (for use by the field formations)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	(a)	Stockbroker service	00440008	00440009	00441298	00440121
*	(b)	Telegraph authority-telephone connection [(b) was omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440003	00440119	00441296	00440122
*	(c)	Telegraph authority-pager[(c) was omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440015	00440020	00441301	00440021
2	(d)	General insurance service	00440005	00440006	00441297	00440120
3	(e)	Advertising agency services	00440013	00440016	00441299	00440017
4	(f)	Courier agency service	00440014	00440018	00441300	00440019
5	(g)	Consulting engineer services	00440057	00440058	00441310	00440059
6	(h)	Custom House Agent service	00440026	00440027	00441302	00440028
7	(i)	Steamer agent services	00440029	00440030	00441303	00440031
8	(j)	Clearing and forwarding agent services	00440045	00440046	00441306	00440047
9	(k)	Manpower recruitment/supply agency service	00440060	00440061	00441311	00440062
*	(ka)	Goods Transport Operator [This description is not to be used since omitted and clubbed under (zpz) Transport of goods by road - goods transport agency service – (zpz)]	00440067	00440068	00441313	00440069
10	(l)	Air travel agent services	00440032	00440033	00441304	00440034
11	(m)	Mandap keeper service	00440035	00440036	00441305	00440037
12	(n)	Tour operator services	00440063	00440064	00441312	00440065
13	(o)	Rent-a-cab scheme operator services	00440048	00440049	00441307	00440050
14	(p)	Architect services	00440072	00440073	00441314	00440074

Sl No.	Finance Act,1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes			
			Tax Collection	Other Receipts (interest)	Penalties	Deduct Refunds (for use by the field formations)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
15	(q)	Interior decoration/ Designer services	00440076	00440077	00441315	00440078
16	(r)	Management or business consultant service	00440116	00440117	00441325	00440118
17	(s)	Chartered accountant services	00440092	00440093	00441319	00440094
18	(t)	Cost accountant service	00440096	00440097	00441320	00440098
19	(u)	Company secretary service	00440100	00440101	00441321	00440102
20	(v)	Real estate agent service	00440104	00440105	00441322	00440106
21	(w)	Security/ detective agency service	00440108	00440109	00441323	00440110
22	(x)	Credit rating agency service	00440088	00440089	00441318	00440090
23	(y)	Market research agency service	00440112	00440113	00441324	00440114
24	(z)	Underwriter service	00440084	00440085	00441317	00440086
*	(za)	Mechanised slaughterhouse service [omitted vide Finance Act, 2001]	00440080	00440081	00441316	00440082
25	(za)	Scientific & technical consultancy services	00440125	00440126	00441326	00440127
26	(zb)	Photography service	00440129	00440130	00441327	00440131
27	(zc)	Convention service	00440133	00440134	00441328	00440135
*	(zd)	Telegraph authority – leased circuit [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440137	00440138	00441329	00440139
*	(ze)	Telegraph authority – telegraph service [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440141	00440142	00441330	00440143
*	(zf)	Telegraph authority – telex service [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440145	00440146	00441331	00440147
*	(zg)	Telegraph authority – facsimile service [omitted w.e.f.01.06.2007 and clubbed under (zzzx)]	00440149	00440150	00441332	00440151

Sl No.	Finance Act,1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes			
			Tax Collection	Other Receipts (interest)	Penalties	Deduct Refunds (for use by the field formations)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
28	(zh)	Online information and database access service and/ or retrieval service through computer network	00440153	00440154	00441333	00440155
29	(zi)	Video production agency/ video tape production service	00440157	00440158	00441334	00440159
30	(zj)	Sound recording studio or agency services	00440161	00440162	00441335	00440163
31	(zk)	Broadcasting service	00440165	00440166	00441336	00440167
32	(zl)	Insurance auxiliary service in relation to general insurance	00440169	00440170	00441338	00440171
33	(zm)	Banking and other Financial services	00440173	00440174	00441339	00440175
34	(zn)	Port service (major ports)	00440177	00440178	00441341	00440179
35	(zo)	Service for repair, reconditioning, restoration, or decoration or any other similar services, of any motor vehicle[(zj) omitted w.e.f 16.6.05]	00440181	00440182	00441343	00440183
*	(zp)	Body corporate other than banks in relation to banking and other financial services—[ omitted w.e.f. 10.09.04 and clubbed under (zm)]	-----	-----	-----	-----
36	(zq)	Beauty parlours /beauty treatment	00440209	00440210	00441361	00440211
37	(zr)	Cargo handling service	00440189	00440190	00441348	00440191
38	(zs)	Cable operators	00440217	00440218	00441366	00440219
39	(zt)	Dry cleaning service	00440221	00440222	00441369	00440223
40	(zu)	Event management	00440197	00440198	00441353	00440199
41	(zv)	Fashion design	00440213	00440214	00441363	00440215
42	(zw)	Health club and fitness centre service	00440205	00440206	00441358	00440207
43	(zx)	Life insurance service	00440185	00440186	00441346	00440187
44	(zy)	Insurance auxiliary service concerning life	00440185	00440186	00441346	00440187

Sl No.	Finance Act,1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes			
			Tax Collection	Other Receipts (interest)	Penalties	Deduct Refunds (for use by the field formations)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
		insurance business				
45	(zz)	Rail travel agent's service	00440201	00440202	00441356	00440203
46	(zza)	Storage and warehousing services	00440193	00440194	00441350	00440195
47	(zzb)	Business auxiliary service	00440225	00440226	00441371	00440227
48	(zzc)	Commercial training or coaching	00440229	00440230	00441374	00440231
49	(zzd)	Erection, commissioning and installation	00440233	00440234	00441376	00440235
50	(zze)	Franchise service	00440237	00440238	00441384	00440239
51	(zzf)	Internet café	00440241	00440242	00441386	00440243
52	(zzg)	Maintenance or repair service	00440245	00440246	00441388	00440247
53	(zzh)	Technical testing and analysis service	00440249	00440250	00441389	00440251
54	(zzi)	Technical inspection and certification agency service	00440249	00440250	00441389	00440251
*	(zzj)	Authorised service station [omitted w.e.f 16.6.05 and clubbed under (zo)]	-----	-----	-----	-----
55	(zzk)	Foreign exchange broker service	00440173	00440174	00441339	00440175
56	(zzl)	Other port (minor port) service	00440177	00440178	00441341	00440179
57	(zzm)	Airport services by airport authority	00440258	00440259	00441391	00440260
58	(zzn)	Transport of goods by air	00440266	00440267	00441393	00440268
59	(zzo)	Business exhibition service	00440254	00440255	00441390	00440256
60	(zzp)	Transport of goods by road/goods transport agency service	00440262	00440263	00441392	00440264
61	(zzq)	Construction services other than residential complex, including commercial/industrial buildings or civil structures	00440290	00440291	00441399	00440292
62	(zzr)	Services by holder of intellectual property	00440278	00440279	00441396	00440280

Sl No.	Finance Act,1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes			
			Tax Collection	Other Receipts (interest)	Penalties	Deduct Refunds (for use by the field formations)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
		right providing intellectual property services other than copyright				
63	(zzs)	Opinion poll agency service	00440274	00440275	00441395	00440276
64	(zzt)	Outdoor catering	00440051	00440052	00441308	00440053
65	(zzu)	Services by a programme producer	00440286	00440287	00441398	00440288
66	(zzv)	Survey and exploration of mineral	00440270	00440271	00441394	00440272
67	(zzw)	Pandal or shamiana service	00440054	00440055	00441309	00440056
68	(zzx)	Travel agent for booking of passage(other than air/rail travel agents)	00440294	00440295	00441400	00440296
69	(zzy)	Services provided by recognised/registered associations in relation to forward contracts	00440282	00440283	00441397	00440284
70	(zzz)	Transport of goods through pipeline or other conduit	00440302	00440303	00441430	00440304
71	(zzza)	Site formation and clearance, excavation, earth moving and demolition services	00440306	00440307	00441431	00440308
72	(zzzb)	Dredging of rivers, ports harbours, backwaters, estuaries, etc.	00440310	00440311	00441432	00440312
73	(zzzc)	Survey and map making service	00440314	00440315	00441433	00440316
74	(zzzd)	Cleaning services	00440318	00440319	00441434	00440320
75	(zzze)	Club or association service	00440322	00440323	00441435	00440324
76	(zzzf)	Packaging service	00440326	00440327	00441436	00440328
77	(zzzg)	Mailing list compilation and mailing service	00440330	00440331	00441437	00440332
78	(zzzh)	Construction of residential complex service	00440334	00440335	00441438	00440336
79	(zzzi)	Service provided by a registrar to an issue	00440338	00440339	00441439	00440340
80	(zzzj)	Service provided by a	00440342	00440343	00441440	00440344



Sl No.	Finance Act,1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes			
			Tax Collection	Other Receipts (interest)	Penalties	Deduct Refunds (for use by the field formations)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
		share transfer agent				
81	(zzzk)	Automated Teller Machine operations, maintenance or management service	00440346	00440347	00441441	00440348
82	(zzzl)	Service provided by a recovery agent	00440350	00440351	00441442	00440352
83	(zzzm)	Selling of space or time slots for advertisements	00440354	00440355	00441443	00440356
84	(zzzn)	Sponsorship service provided to body-corporate or firm including sports sponsorships	00440358	00440359	00441444	00440360
85	(zzzo)	Transport of passengers embarking on domestic/international journey by air	00440362	00440363	00441445	00440364
86	(zzzp)	Transport of goods by rail including transport of goods in containers by rail (for the present, transport of passengers by rail in air-conditioned class/first class also may be paid under this description/accounting code)	00440390	00440391	00441446	00440392
87	(zzzq)	Business support service	00440366	00440367	00441447	00440368
88	(zzzr)	Auction service	00440370	00440371	00441448	00440372
89	(zzzs)	Public relation management service	00440374	00440375	00441449	00440376
90	(zzzt)	Ship management service	00440378	00440379	00441450	00440380
91	(zzzu)	Internet telecommunication services (includes internet telephony Service which became taxable from 01.05.2006)	00440382	00440383	00441451	00440384
92	(zzzv)	Transport of persons by cruise ship	00440386	00440387	00441452	00440388
93	(zzzw)	Credit card, debit card, charge card or other payment card related	00440394	00440395	00441453	00440396

Sl No.	Finance Act,1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes			
			Tax Collection	Other Receipts (interest)	Penalties	Deduct Refunds (for use by the field formations)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
		services				
94	(zzzx)	Services of telegraph authority in relation to telecommunication service	00440398	00440399	00441454	00440400
95	(zzzy)	Mining of mineral, oil or gas service	00440402	00440403	00441455	00440404
96	(zzzz)	Renting of immovable property services	00440406	00440407	00441456	00440408
97	(zzzza)	Works contract service	00440410	00440411	00441457	00440412
98	(zzzzb)	Development and supply of content for use in telecom services, advertising agency, etc.	00440414	00440415	00441458	00440416
99	(zzzzc)	Asset management including portfolio management and fund management	00440418	00440419	00441459	00440420
100	(zzzzd)	Design service other than interior decoration and fashion designing	00440422	00440423	00441460	00440424
101	(zzzze)	Information technology software service	00440452	00440450	00441461	00440451
102	(zzzzf)	Services provided by an insurer of life insurance under Unit Linked Insurance Plan(ULIP)	00440430	00440431	00441462	00440432
103	(zzzzg)	Services provided by a recognized stock exchange in relation to transaction in securities	00440434	00440435	00441463	00440436
104	(zzzzh)	Services provided by recognised/registered associations in relation to clearance or settlement of transactions in goods or forward contracts	00440438	00440439	00441464	00440440
105	(zzzzi)	Services provided by a processing and clearinghouse in relation to securities, goods and forward contracts	00440442	00440443	00441465	00440446

Sl No.	Finance Act,1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes			
			Tax Collection	Other Receipts (interest)	Penalties	Deduct Refunds (for use by the field formations)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
106	(zzzzj)	Services provided by any person in relation to supply of tangible goods	00440445	00440447	00441466	00440448
107	(zzzzk)	Cosmetic and plastic surgery service	00440460	00440463	00441467	00440466
108	(zzzzl)	Transport of goods by coastal shipping (services by way of transportation of goods by inland waterways is placed in the negative list)	00440470	00440473	00441468	00440476
109	(zzzzm)	Legal consultancy service	00440480	00440483	00441469	00440486
110	(zzzzn)	Promotion, marketing , organizing or assisting in organizing games of chance including lottery, etc.	00440595	00440596	00441470	00440597
111	(zzzzo)	Health services by a clinical establishment, health check-up/diagnosis , etc.	00440598	00440599	00441471	00440600
112	(zzzzp)	Maintenance of medical records	00440601	00440602	00441472	00440603
113	(zzzzq)	Service of promotion or marketing of brand of goods/services/events	00440604	00440605	00441473	00440606
11	(zzzzr)	Service of permitting commercial use or exploitation of events	00440607	00440608	00441474	00440609
115	(zzzzs)	Electricity exchange service	00440610	00440611	00441475	00440612
116	(zzzzt)	Copyright service – transfer temporarily/ permit use or enjoyment	00440613	00440614	00441476	00440615
117	(zzzzu)	Special services provided by builders	00440616	00440617	00441477	00440618

Sl No.	Finance Act,1994 erstwhile Section 65(105)	Descriptions of Taxable Services	Accounting Codes			
			Tax Collection	Other Receipts (interest)	Penalties	Deduct Refunds (for use by the field formations)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
118	(zzzzv)	Restaurant service	00441067	00441068	00441478	00441069
119	(zzzzw)	Service of providing accommodation in hotels, inn, guest house, club or campsite whatever name called.	00441070	00441071	00441479	00441072
120		Other taxable services [ services other than the 119 listed above]	00441480	00441481	00441485	00441482

Note: In the above list, 119 descriptions of services (sl.no.1 to 119) are derived from positive list based selective approach and are arranged as they evolved; some of them have undergone change under the negative list approach. At serial number 120, the description reads as 'other taxable services' [services which are not covered by any of the 119 descriptions derived from positive list approach]. Descriptions of services listed above are meant for the purpose of collection of statistics.

#### EDUCATION CESS

Sl.no	Description	Tax collection	Other receipts (interest)	Penalties	Deduct refunds
1	Primary Education Cess	00440298	00440299	00441486	00440300
2	Secondary and Higher Education Cess	00440426	00440427	00441487	00440428

#### ALL TAXABLE SERVICES

Description	Tax collection	Other receipts (interest)	Penalties	Deduct refunds
All Taxable Services (registrations obtained under this description should be amended online by selecting appropriate description/s from the list of 120 descriptions given in this Annexure)	00441089	00441090	00441093	00441094

## **166/1/2013 –REMINDER LETTERS FOR INSURANCE POLICIES**

### **Circular No.166/1/2013 -ST**

F.No 354/190/2012- TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit  
\*\*\*\*\*

Room No 153, North Block, New Delhi  
Dated 1<sup>st</sup> January, 2013

To

Chief Commissioner of Customs and Central Excise (All);  
Chief Commissioner of Central Excise & Service Tax (All);  
Director General of Service Tax; Director General of Central Excise Intelligence;  
Director General of Audit;  
Commissioner of Customs and Central Excise (All);  
Commissioner of Central Excise and Service Tax (All);  
Commissioner of Service Tax (All)  
Respected Madam/Sir,

### **Subject: - Clarification in respect of notices/ reminder letters issued for life insurance policies - regarding.**

It has been represented by life insurance companies that in terms of the practice followed, reminder notices/letters are being issued to the policy holders to pay renewal premiums. Such reminder notices only solicit furtherance of service which if accepted by policy holder by payment of premium results in a service. Clarification has been desired whether service tax needs to be paid on the basis of such reminders.

3. The matter has been examined. Under the Point of Taxation Rules 2011, the point of taxation generally is the date of issue of invoice or receipt of payment whichever is earlier. The invoice mentioned refers to the invoices as issued under Rule 4A of the Service Tax Rules 1994. No tax point arises on account of such reminders. Thus it is clarified that reminder letters/notices for insurance policies not being invoices would not invite levy of service tax. In case of issuance of any invoice, point of taxation shall accordingly be determined.

4. The above clarification is issued only for life insurance sector.

5. Trade Notice/Public Notice may be issued to the field formations accordingly.

6. Please acknowledge the receipt of this circular. Hindi version to follow.

(S.Jayaprahasam)  
Technical Officer, TRU Tel: 011-23092037

## 167/2/2013 - MILK TRANSPORTATION BY RAIL

### Circular No.167/2 /2013 - ST

F.No.B-1/2/2010 -TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
Tax Research Unit

153, North Block,  
New Delhi, 1<sup>st</sup> January, 2013

To

Chief Commissioners of Central Excise and Customs (All), Director General (Service Tax), Director General(Systems), Director General (Central Excise Intelligence), Director General (Audit),Commissioners of Service Tax (All), Commissioners of Central Excise (All), Commissioners of Central Excise and Customs (All)

Madam/Sir,

**Subject: Service tax on services by way of transportation of goods by rail/vessel – transportation of milk - regarding.**

Representation has been received from the Indian Railways seeking clarification as to whether service by way of transportation of milk by rail is covered by Notification No.25/2012-ST dated 20.06.2012, serial number 20(i).

2. The representation has been examined. The expression 'foodstuff' appearing in Notification No.25/2012-ST dated 20.06.2012, serial number 20(i) includes milk. Therefore, it is clarified that the service by way of transportation of milk by rail or a vessel from one place in India to another, is covered by the Notification No.25/2012-ST dated 20.06.2012.
3. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge receipt of this Circular. Hindi version follows.

(S. Jayaprahasam)  
Technical Officer, TRU  
Tel: 011-23092037

## 969/03/2013-CX – CESTAT Appeal forms

Circular No.969/03/2013-CX  
F.No.390/Misc./46/2011-JC  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
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New Delhi, dated 11<sup>th</sup> April, 2013

To,

1. All Chief Commissioners and Director Generals under the Central Board of Excise and Customs.
2. All Authorized Representatives of Customs, Excise & Service Tax Appellate Tribunal.
3. All Commissioners of Customs / Central Excise/ Service Tax / All Joint Chief Departmental Representatives
4. Joint Secretary (Admn), CBEC, Joint Secretary (Revenue-HQ), D/Revenue.
5. Registrar, CESTAT, New Delhi, Deputy/Assistant Registrar,CESTAT, Mumbai, Ahmedabad, Chennai, Bangalore & Kolkata.
6. <webmaster.cbec@icegate.gov.in>

**Sub:- Amendment to CESTAT Appeal Forms – reg..**

Sir / Madam,

The Board has decided to amend/revise the forms for filing appeal in the CESTAT. Accordingly, new forms for Central Excise (E.A.-3, E.A.-4, E.A.-5), Customs (C.A.-3, C.A.-4, C.A.-5) and **Service Tax (S.T.-5, S.T.-6, S.T.-7)** have been notified vide Notification Nos 6/2013-Central Excise (N.T.), 37/2013-Customs (N.T.) and 5/2013-Service Tax, all dated 10.04.2013 respectively. **These forms have been made effective from 1.6 2013. Therefore, all appeals filed in the Tribunal on or after 1.6.2013 would be in the new form being prescribed.**

- (2). The new forms are expected to ensure quick disposal of cases. Additional information sought would lead to faster communication between the Tribunal Registry and the appellant, bunching of cases and would also facilitate creation of a comprehensive database.
- 3). Salient features of the changes introduced in the new appeal forms are as under-
  - (i). Presently appeal against the orders passed by Commissioner (Appeals) under sub-section (2) of Section 35 B of the Central Excise Act, 1944 and sub-section (2) of Section 129A of the Customs Act, 1962 are being filed in E.A.-3 and C.A.-3 forms respectively by the department. These forms are also used for filing appeals by the party. Similarly, E.A.-5 and C.A.-5 forms are being used for filing departmental applications against Order-in-Original of Commissioner on the strength of order of the Committee of Chief Commissioner under sub-section (1) of Section 35E of the CEA, 1944 and sub-section (1) of Section 129D of the Customs Act, 1962. While in the Service tax matter, appeals are filed under Section 86 (2) and Section 86 (2A) of the Finance Act, 1994 against

orders passed by the Commissioner and Commissioner (Appeals) respectively in a single form S.T.-7. Therefore, to align the forms for filing appeals with that of Service Tax, in the new appeal forms, the appeal against order passed by Commissioner (Appeals) in Central Excise and Customs matter are to be filed in the new E.A.-5 and C.A.-5 forms along with appeal against orders passed by the Commissioner.

- (ii). Separate fields have been provided in the new forms seeking details of Assessee Code (PAN based registration number), Location Code (Commissionerate / Division / Range identifier), PAN or UID where PAN is not available. Apart from this, e-mail address, telephone number and fax number of the assessee is also being sought in the new forms. These new fields are intended to facilitate quick communication between the Tribunal Registry and the Appellant and would help in identifying the location code of the assessee in case of shifting of the unit or re-organization of the jurisdiction under which the unit existed earlier. In such cases, the Tribunal Registry was not able to reach to the assessee for service of notices and delivery of orders. Location Codes can be obtained from websites <http://cbec.nsd.com> and [www.aces.gov.in](http://www.aces.gov.in)
- (iii). In appeal forms for Customs, IEC (Importer Exporter Code) is to be furnished mandatorily by the Appellant along with the Port Code so as to identify the Port from which the import or export has taken place. These Port Codes are available on ICEGATE.
- (iv). In Service Tax forms, a separate field for Premises Code is being introduced for identification of the jurisdictional Commissionerate / Division / Range.
- (v). PAN is required to be furnished by the Appellants. In case where PAN is not available and the Appellant is having UID, the same is required to be furnished. This would help in identification / location of persons who are not registered with the Department but are charged with penalty etc.
- (vi). It has been decided to introduce a 21 string alphanumeric number along with the date of the Order against which appeal is being filed. All the 140 existing Commissionerates have been assigned pre-figured series and serial numbers have to be filled in for the orders passed by the Commissioner or Commissioner (Appeal) or Commissioner (Adjudication), as the case may be. Some examples of the alpha-numeric series are as below-

**“AHM-CUSTM-000-COM-034-12-13 DT 02-09-2012.** This would mean Order-in-Original No.34 for the year 12-13 passed by Commissioner of Customs, Ahmadabad.”

In case of Commissioner (Appeals), the alpha numeric number would consist of APP in place of COM. For example-



**“AHM-CUSTM-000-APP-034-12-13 DT 02-09-2012.** This would mean Order-in-Appeal No.34 for the year 12-13 passed by Commissioner of Customs (Appeals), Ahmadabad.”

To illustrate, first three letters denote the city where the Commissionerate office of the Adjudicating authority is located.

The next 5 alpha string denotes the nature of the Commissionerate i.e. **‘CUSTM’** for exclusive Customs Commissionerates, **‘EXCUS’** for combined Commissionerates of Excise, Service Tax & Customs, **‘SVTAX’** for exclusive Service Tax Commissionerates and **‘LTUNT’** for LTU Commissionerates. This part of the code is for the Commissionerate, and NOT for the *subject matter* of the impugned order. Thus, even if the impugned order passed by (or relating to), say, a Central Excise Commissionerate relates to Customs or Service Tax matters, the second part of the code would still read as EXCUS. This is necessary for achieving the desired purpose of Commissionerate-wise indexing of appeals.

The next three numeric strings denote the specific Commissionerate where the first eight strings are not sufficient to identify the Commissionerate. In cases where the first two parts suffice to identify the Commissionerate, this third part will simply be three zeroes, i.e. “000”. For example, the code of Ahmedabad Customs Commissionerate would be AHM-CUSTM-000. The code of Allahabad Central Excise Commissionerate would be ALD-EXCUS-000. The reason why 000 has to be kept in the third part even for such Commissionerates is because no field can be left blank in the string. In respect of places having more than one Central Excise Commissionerates, the third part will be 001, 002, 003 and so on. In respect of Commissioner (Adj), this part will be ‘ADJ’. In respect of Customs (Preventive) Commissionerates, the third part will be PRV. In respect of Customs Commissionerates in Chennai/Delhi/Mumbai, the codes given in the third part suitably capture the nature of the Commissionerate. For example, CHN-CUSTM-SXP refers to Chennai Customs Sea (Export) Commissionerate (the ‘S’ in the 3rd part is for Sea and the XP is for Export). Similarly, in the code DLI-CUSTM-AGN for the Delhi [Airport, ACC (Import) and (General) Commissionerate], the third part AGN means ‘A’ for Airport and ‘GN’ for General.

Thus, to recapitulate, the first three parts (11-characters long) of the proposed numbering system will uniquely identify the Commissionerate of the adjudicating authority. The next three alpha strings denote the officer who is adjudicating the case. COM would denote Order in Original passed by the Commissioner, APP would denote order in appeal passed by the Commissioner (Appeal) and ADJ would mean order in original passed by the Commissioner (Adjudication).

The next three numeric strings is meant for serial number of the order to be assigned by the office of the Commissioner who is passing the order.

The next four numeric strings would denote the financial year in which the order was passed.

The last 8 empty boxes in the string are meant for the date and year of the order passed.

- (vii). Separate entries are being provided in the revised form for demand of duty, fine, penalty and interest.
  - (viii). In order to facilitate bunching of identical issues separate entry has been provided with subject codes which are being appended to the forms. The Appellant would be required to tick mark the subject in dispute. For example, in a Customs Appeal, Sl. No.16 requires the appellant to choose from the list given under three separate heads of "Import", or "Export", or "General" depending upon the nature of the case.
- (4). The above changes may be taken note of by the field formations as well as trade for proper usage of the new forms from 1.6.2013. However, the old forms may continue to be used for a period of three months from the date of coming into effect of the new forms, i.e. till 31.08.2013. **From 01.09.2013 onwards, no appeal shall be filed in the old forms.**
- (5). Wide publicity may be given to the new form for the benefit of trade and industry.
- (6). The [pre-figured alpha numeric numbers](#) for all the 139 Commissionerates and 8 Commissioners (Adjudication) are being uploaded on the websites - <http://www.cbec.gov.in> under [Legal Affairs](#) and <http://www.cdrcestat.gov.in>
- (7). Hindi version follows.

(Sunil K. Sinha)  
Director (Judicial Cell)

## 168/3/2013 - Clarification on Pandal and Shamiyana

**Circular No. 168/3 /2013 - ST**

F. No. 356/2/2013-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit  
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North Block,  
New Delhi, 15<sup>th</sup> April, 2013

To,

Chief Commissioners of Central Excise and Customs (All),  
Director General (Service Tax), Director General (Systems), Director General  
(Central Excise Intelligence), Director General (Audit),  
Commissioners of Service Tax (All), Commissioners of Central Excise (All),  
Commissioners of Central Excise and Customs (All)

Madam/Sir,

**Subject: Tax on service provided by way of erection of *pandal* or *shamiyana* - regarding.**

Several representations have been received seeking clarification on the levy of service tax on the activity of preparation of place for organizing event or function by way of erection/laying of *pandal* and *shamiyana*. The doubt that has been raised is that this may be a transaction involving “transfer of right to use goods” and hence deemed sale.

2. The issue has been examined. “Service” defined in section 65B (44) of the Finance Act, 1994, includes a ‘declared service’. Activity by way of erection of *pandal* or *shamiyana* is a declared service, under section 66E 8(f). The process of erection of *Pandal* or *shamiyana* is a reasonably specialized job and is carried out by the supplier with the help of his own labour. In addition to the erection of *pandal* or *shamiyana* the service is generally coupled with other services like supply of crockery, furniture, sound system, lighting arrangements, etc.
3. For a transaction to be regarded as “transfer of right to use goods”, the transfer has to be coupled with possession. Andhra Pradesh High Court in the case of *Rashtriya Ispat Nigam Ltd. Vs. CTO* [1990 77 STC 182] held that since the effective control and possession was with the supplier, there is no transfer of right to use. This decision of the Andhra Pradesh High Court was upheld by the Supreme Court subsequently [2002] 126 STC 0114. In the matter of *Harbans Lal vs. State of Haryana* – [1993] 088 STC 0357 [Punjab and Haryana High Court], a view was taken that if *pandal*, is given to the customers for use only after having been erected, then it is not transfer of right to use goods.
4. In the case of *BSNL Vs. UOI* [2006] 3 STT 245 Hon'ble Supreme Court held that to constitute the transaction for the transfer of the right to use the goods, the transaction must have the following attributes:-
  - a. There must be goods available for delivery;
  - b. There must be a consensus *ad idem* as to the identity of the goods;

- c. The transferee should have a legal right to use the goods and, consequently, all legal consequences of such use including any permissions or licenses required therefor should be available to the transferee;
  - d. For the period during which the transferee has such legal right, it has to be the exclusion of the transferor : this is the necessary concomitant or the plain language of the statute, viz., a “transfer of the right to use” and not merely a license to use the goods:
  - e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.
5. Applying the ratio of above judgments and the test formulated by Hon'ble Supreme Court, the activity of providing *pandal* and *shamiana* along with erection thereof and other incidental activities do not amount to transfer of right to use goods. It is a service of preparation of a place to hold a function or event. Effective possession and control over the *pandal* or *shamiana* remains with the service provider, even after the erection is complete and the specially made-up space for temporary use handed over to the customer.
  6. Accordingly services provided by way of erection of *pandal* or *shamiana* would attract the levy of service tax.
  7. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge receipt of this Circular. Hindi version follows.

(S. Jayaprahasam)  
Technical Officer, TRU  
Tel: 011-2309 2037

## 169/4/2013 - Clarification on VCES

### Circular No. 169/4 /2013 - ST

F. No. B1/19/2013-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit  
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New Delhi, dated the 13th May, 2013

To,  
Chief Commissioners of Central Excise and Customs (All),  
Director General (Service Tax), Director General (Systems),  
Director General (Central Excise Intelligence), Director General (Audit),  
Commissioners of Service Tax (All), Commissioners of Central Excise (All),  
Commissioners of Central Excise and Customs (All)  
Madam/Sir,

#### **Sub: 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:

<b>S. No.</b>	<b>Issues</b>	<b>Clarification</b>
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.

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.
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3. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge receipt of this Circular. Hindi version follows.

Yours sincerely,  
(S. Jayaprahasam)  
Technical Officer, TRU  
Tel: 011-2309 2037

## 170/5 /2013 - Clarification on VCES

### 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 the Ahmedabad unit has not. Whether the Ahmedabad unit is eligible for VCES?	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 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	Yes. There is no bar from filing of declaration in such cases.

	declaration under the Scheme?	
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 .
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.
10	Whether upon filing a declaration a declarant realizes that the 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



	filed by him was incorrect by mistake? Can he file an amended declaration?	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?	<p>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.</p> <p>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.</p> <p>The declarant shall be given an opportunity to be heard before any order is passed by the designated authority.</p>
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 <sup>451</sup> .
14	A declarant pays a certain amount under the Scheme and subsequently his declaration is rejected. Would the amount so paid by	The amount so paid can be adjusted against the liability that is determined by the department.

<sup>451</sup> ST, VCES, 2013 is part and parcel of the Finance Act, 1994, by virtue of the Finance Act, 2013, thus order of rejection by the designated authority viz. Deputy Commissioner of CE & ST is appealable under section 86 of the FA, 1994 – Barnala Builders & Property Consultants 2013-VCESI-003-HC-P&H

	him be adjusted against his liability that may be 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.	<p>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.</p> <p>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".</p> <p>This example is only illustrative.</p>
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?	<p>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.</p> <p>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.</p>
18	<p>(a) Whether the tax dues amount paid under VCES would be eligible as CENVAT credit to the recipient of service under a supplementary invoice?</p> <p>(b) Whether cenvat credit would be admissible to the person who pays tax dues under VCES as service recipient under reverse charge mechanism?</p>	<p>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.</p> <p>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.</p>
19	In terms of section 106 (2)(b), if a declaration made by a person against whom an audit <u>has been initiated</u> and where such <u>audit is pending</u> ,	<u>Initiation of audit:</u> 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

<p>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,-</p> <p>(i) initiation of audit; and</p> <p>(ii) culmination of audit.</p>	<p>purposes.</p> <p><u>Culmination of audit:</u> The audit process may culminate in any of the following manner.-</p> <p>(i) Closure of audit file if no discrepancy is found in audit;</p> <p>(ii) Closure of audit para by the Monitoring Committee Meeting (MCM);</p> <p>(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;</p> <p>(iv) Approval of audit para by MCM, and issuance of SCN, if party does not agree to the para so raised.</p> <p>The audit culminates at a point when the audit paras raised are settled in any manner as stated above.</p> <p>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.</p>
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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**

### 171/6/2013 - Circular on Arrest and Bail

F.No. 137/47/2013-Service Tax  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
Service Tax Wing

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New Delhi, the 17th September, 2013

To,  
All Chief Commissioners of Central Excise  
All Chief Commissioners of Customs and Central Excise  
All Directors General  
All Commissioners of Service Tax  
All Commissioners of Central Excise

**Subject: Guidelines for arrest and bail in relation to offences punishable under the Finance Act, 1994**

Section 103 (K) of the Finance Act, 2013 has introduced Sections 90 & 91 in the Finance Act, 1994, with effect from 10<sup>th</sup> May, 2013. In terms of section 90 of the Finance Act, 1994, as amended, offences under section 89(1) (ii) shall be cognizable and all other offences shall be non-cognizable and bailable. In terms of section 91(1) read with section 89(1) (i) and (ii) of the Finance Act, 1994, as amended, the power to arrest has been introduced in cases involving evasion of service tax covered under section 89(1) (i) and (ii) of the Finance Act, 1994, as amended and the amount of service tax evaded exceeds rupees fifty lakh. In this context, the following points may be noted for strict compliance:-

1.2 The following cases are covered under section 89(1) (i):

1.2.1 where a person knowingly evades the payment of service tax, or

1.2.2 avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules, or

1.2.3 maintains false books of accounts or fails to supply any information which he is required to supply or supplies false information,

and the amount of service tax involved is more than fifty lakh rupees.

In such cases, the Assistant Commissioner or the Deputy Commissioner 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( 2 of 1974). This is in terms of section 91(3) of the Finance Act, 1994, as amended.

1.3 The following cases are covered under section 89(1) (ii):

1.3.1 where a person has collected any amount exceeding fifty lakh rupees as service tax but fails to pay the amount as collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

In such cases, after following the due procedure of arrest, the arrested person must be produced before the magistrate without unnecessary delay, and definitely within 24 hours. This is in terms of section 91(2) of the Finance Act, 1994, as amended. The magistrate will decide on whether or not to grant bail.

## **2.0 Conditions precedent**

2.1 Since arrest impinges on the personal liberty of an individual, this power must be exercised carefully. The Finance Act 1994, as amended, has specified categories of offences in respect of which only powers of arrest may be exercised and these offences are covered under clause (i) or clause (ii) of sub-section (1) of section 89 of the Finance Act, 1994. Further, the Finance Act 1994 has also prescribed value limits of evasion of service tax exceeding Rs 50 lakh, for exercising the powers of arrest.

2.2 The legal stipulations in the Finance Act 1994, as amended, contained in section 91 read with section 89 must be strictly adhered to. An officer of Central Excise not below the rank of Superintendent of Central Excise can carry out an arrest on being authorized by the Commissioner of Central Excise. To authorize the arrest the Commissioner should have reason to believe that the person proposed to be arrested has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89. The reason to believe must be based on credible material which will stand judicial scrutiny.

2.3 Apart from fulfilling the legal requirements, the need to ensure proper investigation, prevention of the possibility of tampering with evidence or intimidating

or influencing witnesses and large amounts of service tax evaded are relevant factors before deciding to arrest a person.

### **3.0 Procedure for arrest**

3.1 The provisions of the Code of Criminal Procedure 1973 (2 of 1974) relating to arrest and the procedure thereof must be adhered to . It is therefore advised that the Commissioner should ensure that all officers are fully familiar with the provisions of the Code of Criminal Procedure 1973 (2 of 1974).

3.2 There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in D.K Basu vs State of West Bengal reported in 1997(1) SCC 416 ( see paragraph 35). The arrest memo should include:

3.2.1 brief facts of the case;

3.2.2 details of the person arrested;

3.2.3 gist of evidence against the person;

3.2.4 relevant section (s) of the Finance Act, 1994 or other laws attracted to the case and to the arrested person;

3.2.5 the grounds of arrest must be explained to the arrested person and this fact noted in the arrest memo;

3.2.6 a nominated person (as per the details provided by arrested person) of the arrested person should be informed immediately and this fact also may be mentioned in the arrest memo;

3.2.7 the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to the person arrested under proper acknowledgment;

3.2.8 a separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event that there are several arrests in a single case.

3.3 Further there are certain modalities that should be complied with at the time of arrest and pursuant to an arrest, which include the following:

3.3.1 A female should be arrested by or in the presence of a woman officer;

3.3.2 Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Governments and in case the medical officer is not available , by a registered medical practitioner, soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer , and in case the female medical officer is not available, by a female registered medical practitioner.

3.3.3 It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.

### **4.0 Post arrest formalities**

4.1 The procedure is separately outlined for the different categories as listed in section 89(1) (i) and (ii) of the Finance Act, 1994, as amended:

4.1.1 In cases covered under section 89(1) (i), the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also informed on telephone to the nominated person of the person (s) arrested .The

arrested person should be also allowed to talk to a nominated person. The conditions will relate to, inter alia, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and security will depend, inter alia, on the amount of tax involved.

4.1.2 If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four (24) hours of arrest. The arrested person may be handed over to the nearest police station for his safe custody, within 24 hours, during the night under a challan, before he is produced before the Court.

4.2 In cases covered under section 89(1) (ii) and only in the event of circumstances preventing the production of the arrested person before a Magistrate without unnecessary delay, the arrested person may be handed over to nearest Police Station for his safe custody, within 24 hours, under a proper challan, and produced before the Magistrate on the next day, and the nominated person of the arrested person may be also informed accordingly.

4.3 Formats of the relevant documentation i.e. the Bail Offer Letter, the Bail Bond and the Challan for handing over to the police, in the Code of Criminal Procedure, 1973. ( 2 of 1974) may be followed.

4.4 Every Commissionerate should maintain a Bail Register which will have the details of the case, arrested person, bail amount, surety amount. The money/instruments/documents received as surety should be kept in safe custody. The money should be deposited in the treasury. The other instruments/documents should be kept in the custody of a single nominated officer. It should be ensured that the instruments/documents received as surety are kept valid till the bail is discharged.

## 5.0 Reporting System

5.1 A report on every person arrested should be sent to the jurisdictional Chief Commissioner with a copy to DGCEI (Headquarters) the same day or on the next day.

5.2 Chief Commissioners shall send a report on every arrest to the Zonal Member within 24 hours of the arrest giving such details as prescribed in the monthly report . To maintain an all India record of arrests made in service tax, a monthly report of all persons arrested in the Zone shall be sent by the Chief Commissioner to DGCEI (Headquarters), New Delhi, by the 5<sup>th</sup> of the succeeding month, in the following format:

Monthly Report on Persons Arrested in a Zone

S.No	Name, designation and age of arrested person	Date of arrest	Commissionerate	Name and Registration Number of Company	Amount of duty evaded	Role in evasion and nature of evidence collected
Total						

Yours faithfully

(Rajeev Yadav)  
Director (Service Tax)

**172/7/2013 – Education services – Clarification**

**Circular No.172/7/2013 – ST**

F. No.B1/14/2013-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
Tax Research Unit

146-F, North Block  
New Delhi, 19<sup>th</sup> September, 2013

To  
Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax), Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: Education services – clarification -- reg.**

The following representations have been received seeking clarifications regarding the levy of service tax on certain services relating to the education sector:

1. Private Schools Correspondents Confederation, Madurai.
2. Tamil Nadu Nursery, Primary, matriculation and Higher Secondary Schools Association, Chennai.
3. Punjab Association, Chennai.
4. Association of Self financing Universities of Rajasthan
5. Unaided Schools' Forum, Mumbai.
6. Vedavalli Vidyalaya, Wallajapet.
7. Independent Schools Associations, Chandigarh.
8. Mother Teresa Public School, New Delhi.
9. BVM Global, Chennai.
10. Sastra University, Tanjavur.
11. HLC International, Chennai.
12. Sodexo Food Solutions, Mumbai.
13. Federation of Associations of Maharashtra, Mumbai.

2. The matter is covered by two provisions of the Finance Act, 1994. Section 66D of the Finance Act contains a negative list of services and clause (l) thereof reads as under:

*“services by way of –*

*(i) pre-school education and education upto higher secondary school or equivalent;*

*(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*

*(iii) education as a part of an approved vocational education course;”.*

Further section 93(1) of the Finance Act, 1994, enables the Government to exempt generally or subject to such conditions taxable service of specified description. By virtue of the said power, Government has issued a notification No.25/2012-ST dated 20<sup>th</sup> June, 2012, exempting certain services. Sl.no.9 thereof reads as follows:

*“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;”.*

**As defined in the said notification, "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.**

3. By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as “auxiliary educational services” and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.



4. In addition to the services mentioned in the definition of “auxiliary educational services”, other examples would be hostels, housekeeping, security services, canteen, etc.

5. Thus the apprehensions conveyed in the representations submitted by certain educational institutions and organizations have no basis whatsoever. These institutions and organizations are requested not to give credence to rumours or mischievous suggestions. If there is any doubt they are requested to approach the Chief Commissioner concerned.

6. All concerned are requested to acknowledge the receipt of this circular.

(J.M.Kennedy)  
Director, TRU  
[Tel: 011-23092634](tel:011-23092634)  
[E-mail: jm.kennedy@nic.in](mailto:jm.kennedy@nic.in)

**173/8/2013 – Restaurant clarifications**

F.No.334/3/2013-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
Tax Research Unit

North Block  
New Delhi, 7<sup>th</sup> October, 2013

To  
Chief Commissioners of Central Excise and Customs (All),  
Director General (Service Tax), Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All)  
Commissioners of Central Excise (All),  
Commissioners of Central Excise and Customs (All).

Madam/Sir,

**Subject: Restaurant Service- clarification -regarding**

As part of the Budget exercise 2013, the exemption for services provided by specified restaurants extended vide serial number 19 of Notification 25/2012-ST was modified vide para 1 (iii) of Notification 3/2013-ST. This has become operational on the 1<sup>st</sup> of April, 2013.

2. In this context, representations have been received. On the doubts and questions raised therein clarifications are as follows:

SR	Doubts	Clarifications
1.	In a complex where air conditioned as well as non-air conditioned restaurants are operational but food is sourced from the common kitchen, will service tax arise in the non-air conditioned restaurant?	Services provided in relation to serving of food or beverages by a restaurant, eating joint or mess, having the facility of air conditioning or central air heating in any part of the establishment, at any time during the year (hereinafter referred as 'specified restaurant') attracts service tax. In a complex, if there is more than one restaurant, which are clearly demarcated and separately named but food is sourced from a common kitchen, only the service provided in the specified restaurant is liable to service tax and service provided in a non air-conditioned or non centrally air- heated restaurant will not be liable to service tax. In such cases, service provided in the non air-conditioned / non-centrally air-heated restaurant will be treated as exempted service and credit entitlement will be as per the Cenvat Credit Rules.
2.	In a hotel, if services are provided by a specified restaurant in other areas e.g. swimming pool or an open area attached to the restaurant, will service tax arise?	Yes. Services provided by specified restaurant in other areas of the hotel are liable to service tax.

3.	Whether service tax is leviable on goods sold on MRP basis across the counter as part of the Bill/invoice.	If goods are sold on MRP basis (fixed under the Legal Metrology Act) they have to be excluded from total amount for the determination of value of service portion.
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3. Trade Notice/Public Notice may be issued to the field formations and taxpayers. Please acknowledge receipt of this Circular. Hindi version follows.

Yours sincerely,

(S. Jayaprahasam)  
Technical Officer, TRU  
Tel: 011-2309 2037

## 174/9/2013 – VCES clarifications

F.No.B1/19/2013-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)

North Block  
New Delhi, 25<sup>th</sup> November, 2013

To,  
Chief Commissioners of Central Excise and Customs (All),  
Director General (Service Tax), Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All)  
Commissioners of Central Excise (All),  
Commissioners of Central Excise and Customs (All).

Madam/Sir,

### **Sub: The Service Tax Voluntary Compliance Encouragement Scheme - reg.**

The Service Tax Voluntary Compliance Encouragement Scheme (VCES) has come into effect from 10.5.2013. Most of the issues raised with reference to the Scheme have been clarified by the Board vide circular Nos. 169/4/2013-ST, dated 13.5.2013 and No. 170/5/2013-ST, dated 8.8.2013. These clarifications have also been released in the form of FAQs. Attention is also invited to letter F. No. 137/50/2013-ST, dated 22.8.2013 as regards the action to be taken by the field formations for effective implementation of the Scheme. A number of interactive sessions have also been held at various places to ascertain and address the concerns of trade on any aspect of the Scheme.

2. In the recently held interactive sessions at Chennai, Delhi and Mumbai, which were chaired by the Hon'ble Finance Minister, the trade had raised certain queries and also expressed some apprehensions. Most of these issues have already been clarified in the aforementioned circulars/FAQs. Certain issues raised in these interactive sessions, which have not been specifically clarified hitherto or clarified adequately, are discussed and clarified as below.

S.No.	Issue raised	Clarification
1	An instance was brought to notice wherein a declaration was returned probably on the ground that it was incomplete.	As has already been directed by the Board, vide the said letter dated 22.8.2013 (para 2.4 of the letter), the designated authority shall ensure that no declaration is returned. In all cases, declaration should be promptly received and duly acknowledged. Request for clarification should be dealt with promptly. Defects in the application, if any, should be explained to the declarant and possible assistance be provided in rectifying these defects. The effort must be to accept a declaration, as far as possible, and recover the arrears of tax.
2	An apprehension was raised that declarations are being considered for rejection under section 106 (2) of the Finance Act, 2013, even though the "tax dues" pertain to an issue or a period which is different	Section 106(2) prescribes four conditions that would lead to rejection of declaration, namely, (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

	<p>from the issue or the period for which inquiry /investigation or audit was pending as on 1.3.2013.</p>	<p>Finance Act,1994 ; or</p> <p>(ii) issuance of summons under section 14 of the Central Excise Act, 1944; or</p> <p>(iii) requiring production of accounts, documents or other evidence under the Finance Act, 1994 or the rules made there under; or</p> <p>(b) an audit has been initiated, and such inquiry, investigation or audit was pending as on the 1st day of March, 2013.</p> <p>These conditions may be construed strictly and narrowly. The concerned Commissioner may ensure that no declaration is rejected on frivolous grounds or by taking a wider interpretation of the conditions enumerated in section 106(2). If the issue or the period of inquiry, investigation or audit is identifiable from summons or any other document, the declaration in respect of such period or issue <u>alone</u> will be liable for rejection under the said provision.</p> <p>Examples:</p> <p>(1) If an inquiry, investigation or audit, pending as on 1.3.2013 was being carried out for the period from 2008-2011, benefit of VCES would be eligible in respect of 'tax dues' for the year 2012, i.e., period not covered by the inquiry, investigation or audit.</p> <p>(2) If an inquiry or investigation, pending as on 1.3.2013 was in respect of a specific issue, say renting of immovable property, benefit of VCES would be eligible in respect of 'tax dues' concerning any other issue in respect of which no inquiry or investigation was pending as on 1.3.2013.</p> <p>It is also reiterated 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 such reasons to reject the declaration. Commissioners should ensure that this time line is followed scrupulously.</p>
3	<p>Whether benefit of VCES would be available in cases where documents like balance sheet, profit and loss account etc. are called for by department in the inquiries of roving nature, while quoting authority of section 14 of the Central Excise Act in a routine manner.</p>	<p>The designated authority/ Commissioner concerned may take a view <u>on merit</u>, taking into account the facts and circumstances of each case as to whether the inquiry is of roving nature or whether the provisions of section 106 (2) are attracted in such cases.</p>
4	<p>Whether the benefit of the Scheme shall be admissible in respect of any amount covered under the definition of 'taxes dues', as defined in the Scheme, if paid by an</p>	<p>Yes, benefit of the Scheme would be available if such amount is declared under the Scheme subsequently, along with the remaining tax dues, if any, provided that Cenvat credit has not been utilized for payment of such amount.</p>

	assesses after the date of the Scheme coming into effect, (i.e., 10.5.2013), but before a declaration is filed	Example: A person has tax dues of Rs 10 lakh. He makes a payment of Rs 2 lakh on 15.5.2013, without making a declaration under VCES. He does not utilize Cenvat credit for paying this amount. Subsequently, he makes declaration under VCES on 1.7.2013. He may declare his tax dues as Rs 10 lakh. Rs 2 lakh paid before making the declaration will be considered as payment under VCES.
5	Whether declaration can be made in such case where service tax pertaining to the period covered by the Scheme along with interest has already been paid by the parties, before the Scheme came into effect, so as to get waiver from penalty and other proceedings?	As no "tax dues" is pending in such case, declaration cannot be filed under VCES. However, there may be a case for taking a lenient view on the issue of penalties under the provision of the Finance Act, 1994. In this regard attention is invited to section 73 (3) and section 80 of the Finance Act, 1994.

3. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge receipt of this Circular. Hindi version follows.

Yours sincerely,

(S. Jayaprahasam)

Technical Officer, TRU

Tel: 011-2309 2037

## 175/01/2014 ST – RWA Clarification

Dated: January 10, 2014

To

Chief Commissioners of Central Excise and Service Tax (All), Director General (Service Tax), Director General (Central Excise Intelligence), Director General (Audit), Commissioners of Service Tax (All), Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject :** Levy of service tax on services provided by a Resident Welfare Association (RWA) to its own members – regarding.

Service tax on 'club or association service' which covers Resident Welfare Association (RWA) was introduced with effect from 16.06.2005, vide section 65(105)(zzze) read with section 65(25a)[(25a) was later renumbered as (25aa)]. Under the positive list approach which was followed prior to 1 st July 2012, exemption was available under notification No. 8/2007-ST dated 01.03.2007, if the total consideration received from an individual member by the RWA for the services does not exceed three thousand rupees per month. This notification was rescinded vide notification No. 34/2012-ST dated 20 th June 2012, with effect from 1 st July, 2012.

2. Under the negative list approach, with effect from 1 st July, 2012, notification No.25/2012-ST [sl.no.28 (c)] provides for exemption to service by a RWA to its own members by way of reimbursement of charges or share of contribution up to five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members.

Certain doubts have been raised regarding the scope of the present exemption extended to RWAs under the negative list approach. These doubts have been examined and clarifications are given below:

Sl. No.	Doubt	Clarification
1.	(i) In a residential complex, monthly contribution collected from members is used by the RWA for the purpose of making payments to the third parties, in respect of commonly used services or goods [Example: for providing security service for the residential complex, maintenance or upkeep of common area and common facilities like lift, water sump, health and fitness centre, swimming pool, payment of electricity Bill for the common area and lift, etc.]. Is service tax leviable?  (ii) If the contribution of a member/s of a RWA	Exemption at Sl. No. 28 (c) in notification No. 25/2012-ST is provided specifically with reference to service provided by an unincorporated body or a non-profit entity registered under any law for the time being in force such as RWAs, to its own members.  However, a monetary ceiling has been prescribed for this exemption, calculated in the form of five thousand rupees per month per member contribution to the RWA, for sourcing of goods or services from third person for the common use of its members.  If per month per member contribution of any or some members of a RWA exceeds five thousand rupees, the entire contribution of such members whose per month contribution exceeds five thousand rupees would be ineligible for the exemption under the said notification. Service tax would then be leviable on the aggregate amount of monthly contribution of such members.

	exceeds five thousand rupees per month, how should the service tax liability be calculated?	
2.	(i) Is threshold exemption under notification No. 33/2012-ST available to RWA?  (ii) Does 'aggregate value' for the purpose of threshold exemption, include the value of exempt service?	Threshold exemption available under notification No. 33/2012-ST is applicable to a RWA, subject to conditions prescribed in the notification. Under this notification, taxable services of aggregate value not exceeding ten lakh rupees in any financial year is exempted from service tax. As per the definition of 'aggregate value' provided in Explanation B of the notification, aggregate value does not include the value of services which are exempt from service tax.
3.	If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a 'pure agent' of its members, is exclusion from value of taxable service available for the purposes of exemptions provided in Notification 33/2012-ST or 25/2012-ST ?	In Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the Rule.  For illustration, where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment in respect of electricity consumed thereon, is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available. However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in these transactions, the exclusion from the value of taxable service would not be available.
4.	Is CENVAT credit available to RWA for payment of service tax?	RWA may avail cenvat credit and use the same for payment of service tax, in accordance with the Cenvat Credit Rules.

3. Trade Notice/ Public Notice to be issued. Hindi version to follow.

**F. No.354/237/2013-TRU**

**[Raj Kumar Digvijay]**  
**Under Secretary to the Government of India**



**176/2/2014 – ST – VCES Discharge and CENVAT**

F. No. B1/19/2013-TRU (Pt)

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New Delhi, dated the 20<sup>th</sup> January, 2014

To,  
Chief Commissioners of Central Excise and Customs (All),  
Director General (Service Tax), Director General (Systems),  
Director General (Central Excise Intelligence), Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise (All),  
Commissioners of Central Excise and Customs (All)

Madam/Sir,

**Subject: Clarification regarding issue of Discharge Certificate under VCES and availment of CENVAT credit - regarding.**

Trade and Industry has sought clarification as to whether the first installment of tax dues paid under Voluntary Compliance Encouragement Scheme (VCES), 2013 would be available as Cenvat Credit immediately after payment or Cenvat credit can be availed only after payment of tax dues in full and receipt of Acknowledgement of Discharge in form VCES-3.

2. The issue has been examined. As per VCES, under Section 108 (2) of the Finance Act, 2013, a declaration made under Section 107 (1) shall become conclusive only upon issuance of acknowledgement of discharge under Section 107 (7). Further, in terms of Rule 7 of the Service Tax VCES Rules 2013, the acknowledgement of discharge in form VCES-3 shall be issued within a period of 7 working days from the date of furnishing of details of payment of tax dues in full along with interest, if any, by the declarant.

3. It would be in the interest of VCES declarants to make payment of the entire service tax dues at the earliest and obtain the discharge certificate within 7 days of furnishing the details of payment. As already clarified in the answer to question No.22 of FAQ issued by CBEC dated 08.08.2013, eligibility of CENVAT credit would be governed by the CENVAT Credit Rules, 2004.

4. Chief Commissioners are also advised that upon payment of the tax dues in full, along with interest, if any, they should ensure that discharge certificate is issued promptly and not later than the stipulated period of seven days.

Yours sincerely,

(S. Jayaprahasam)  
Technical Officer, TRU  
Tel: 011-2309 2037

**177/03/2014 – ST – Rice, paddy clarification**

F. No.334/03/2014-TRU

17<sup>th</sup> February, 2014

To,

Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax), Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: Rice– exemptions from service tax -- regarding.**

Doubts have been raised regarding the scope and applicability of various exemptions available to various activities in relation to rice, under the negative list approach. These doubts have been examined and clarifications are given below:

2. These doubts have arisen in the context of definition of 'agricultural produce' available in section 65B(5) of the Finance Act, 1994. The said definition covers 'paddy'; but excludes 'rice'. However, many benefits available to agricultural produce in the negative list [section 66D(d)] have been extended to rice, by way of appropriate entries in the exemption notification.

3. Transportation of rice:

3.1 by a rail or a vessel: Services by way of transportation of food stuff by rail or a vessel from one place in India to another is exempt from service tax vide exemption notification 25/2012-ST dated 20<sup>th</sup> June, 2012 [entry sl.no.20(i)]; food stuff includes rice.

3.2 by a goods transport agency: Transportation of food stuff by a goods transport agency is exempt from levy of service tax [exemption notification 25/2012-ST dated 20<sup>th</sup> June, 2012 [entry sl.no.21(d)]; amending notification 3/2013-ST dated 1<sup>st</sup> March 2013]. Food stuff includes rice.

4. Loading, unloading, packing, storage and warehousing of rice: Exemption has been inserted in the exemption notification 25/2012-ST dated 20<sup>th</sup> June, 2012 [entry sl.no.40]; amending notification 4/2014-ST dated 17<sup>th</sup> February 2014 may be referred.

5. Milling of paddy into rice: When paddy is milled into rice, on job work basis, service tax is exempt under sl.no.30 (a) of exemption notification 25/2012-ST dated 20<sup>th</sup> June, 2012, since such milling of paddy is an intermediate production process in relation to agriculture.

6. Reference may be made to JS, TRU in case of any further doubt. Trade Notice/ Public Notice may be issued. Hindi version to follow.

[S.Jayaprahasam]  
Technical Officer, TRU

**974/08/2013-CX - Arrest and Bail**  
**F. No. 4/2/2011-CX-1**

New Delhi, the 17<sup>th</sup> September 2013

To

All Chief Commissioners of Central Excise & Customs,  
All Chief Commissioners of Central Excise,

All Directors General,  
Sir/Madam,

**Subject – Arrest and Bail under Central Excise Act, 1944 - reg.**

1.1 I am directed to invite your attention to the amendments to sections 9A, 20 and 21 of the Central Excise Act, 1944 vide the Finance Act, 2013. A new sub-section (1A) has been inserted in section 9A to specify that the offences relating to excisable goods, where the duty involvement exceeds Rs. fifty lakh and which are punishable under clause (b) or clause (bbbb) of sub-section (1) of section 9, are cognizable and non-bailable. For ease of reference, clause (b) and clause (bbbb) of sub-section 9(1) as well as new sub-section 9A (1A) are summarized below:

(i) Clause (b) of sub-section 9(1) - Whoever evades the payment of any duty payable under this Act;

(ii) Clause (bbbb) of sub-section 9(1) – Whoever contravenes any of the provisions of this Act or the rules made there under in relation to credit of any duty allowed to be utilised towards payment of excise duty on final product.

(iii) Sub-section 9A(1A) - The offences relating to excisable goods where the duty leviable thereon under this Act exceeds fifty lakh rupees and punishable under clause (b) or clause (bbbb) of sub-section (1) of section 9, shall be cognizable and non-bailable.

1.2 All other offences under section 9 are non-cognizable and bailable.

2.1 Thus the offences under Central Excise Act fall in two categories - bailable and non-bailable. Depending on the type of offence committed, a person is liable to be arrested in either of the two category of offence. Since arrest takes away the liberty of an individual, the power must be exercised with utmost care and caution and only when the exigencies of the situation demand arrest.

**Non-bailable offences**

3.1 A person is liable to be arrested for non-bailable offence only when the offence committed by him is covered under clause (b) or clause (bbbb) of sub-section 9(1) and the duty involvement exceeds Rs. fifty lakh. Thus, it is essential to examine offences in each and every case with reference to each of the clauses

of sub-section 9(1) and also the quantum of duty involved prior to invoking the arrest provisions. Only where clause (b) or clause (bbbb) are the most appropriate clauses to describe the offence and duty involved exceeds rupees fifty lakhs, these provisions should be invoked. Any person arrested for offences under these clauses should be informed of the grounds of arrest and produced before a magistrate without unnecessary delay and within 24 hours of arrest.

3.2 A list of non-bailable offences where decision to arrest may be taken by the Commissioner is given below:-

- (a) clandestine removal of manufactured goods;
- (b) removal of goods without declaring the correct assessable value and receiving a portion of sale price in cash which is in excess of invoice price and not accounted for in the books of account;
- (c) taking Cenvat Credit without the receiving the goods specified in the invoice;
- (d) taking Cenvat Credit on fake invoices;
- (e) issuing Cenvatable invoices without delivering the goods specified in the said invoice.

3.3 In all other cases of cognizable and non-bailable offences, covered by clause (b) or clause (bbbb) of sub-section 9(1) where the duty involved exceeds rupees fifty lakhs, which are not listed at paragraph 3.2 above, e.g. (i) removal of inputs as such, without reflecting such removal in records, on which Cenvat credit has been taken, without payment of amount equal to the credit availed on such inputs (ii) irregular and wrongful availment of benefit of central excise duty exemption by reason of fraud, collusion, willful misstatement, suppression of facts, or contravention of the provisions of the Act or the rules with intent to evade payment of duty, etc, decision to arrest shall be taken by the Commissioner only with the approval of the jurisdictional Chief Commissioner.

### **Bailable offence**

4.1 A person is also liable to be arrested in case of non-cognizable and bailable offences, when such an offence is committed. Amendments have been made in section 20 and section 21 to provide, *inter alia*, that powers to grant bail or

release an arrested person on execution of bond can be exercised only for offences which are non-cognizable. Any person arrested for non-cognizable offence shall have to be released on bail, if he offers bail, and in case of default of bail, he is to be forwarded to the custody of magistrate. In terms of notification no 9/99-C.E.(N.T.) dated 10-2-99, an officer not below the rank of Superintendent of Central Excise can exercise powers under section 21 including powers to grant bail.

4.2 Bail should be subject to the condition(s), as deemed fit, depending upon the facts and circumstances of each individual case. It has to be ensured that the amount of bail bond/ surety should not be excessive and should be commensurate with the financial status of the arrested person. Further the bail conditions should be informed by the arresting officer in writing to the person arrested and also informed on telephone to the nominated person of the person(s) arrested. Arrested person should be allowed to talk to the nominated person. If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail. The arresting officer may, and shall if such a person is indigent and unable to furnish surety, instead of taking bail, discharge him on executing a bond without sureties to his appearance as provided under section 436 of CrPC. However, in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate magistrate within 24 hours of arrest.

4.3 Only in the event of circumstances preventing the production of the person arrested before a Magistrate without unnecessary delay, the arrested person may be handed over to nearest Police Station for his safe custody during night, under proper Challan and produced before the magistrate the next day. These provision shall apply for non-bailable offence also. The nominated person of the arrested person may also be informed accordingly.

### **Precautions to be taken by the departmental officers**

5.1 Powers to arrest a person needs to be exercised with utmost caution. Chief Commissioners/ Commissioners of Central Excise are required to ensure that approval for arrest for non-bailable offence is granted only where the intent to evade duty is evident and element of *mens rea* / guilty mind is palpable. Attention is also invited to the decision of the Hon'ble Supreme Court in case of

D. K. Basu Vs State of West Bengal, wherein specific guidelines in respect of arrest have been provided. These are required to be followed.

5.2 Decision to arrest needs to be taken on case-to-case basis considering various factors, such as, nature & gravity of offence, quantum of duty evaded or credit wrongfully availed, nature & quality of evidence, possibility of evidences being tampered with or witnesses being influenced, cooperation with the investigation, etc. To summarize, power to arrest has to be exercised after careful consideration of the facts of the case and the above factors.

5.3 There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions of Hon'ble Supreme Court in case of D. K. Basu Vs State of W.B reported as 1997 (1) SCC 416. The arrest memo should include -

- (a) brief facts of the case;
- (b) details of the person arrested;
- (c) gist of evidence against the person;
- (d) relevant Section(s) of the Central Excise Act, 1944 attracted in the case;
- (e) the grounds of arrest must be explained to the person arrested and this fact noted in the arrest memo;
- (f) a nominated person (as per details provided by the person arrested) of the person arrested should be informed immediately and this fact also may be mentioned in the arrest memo;
- (g) the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to person arrested under proper acknowledgement;
- (h) a separate arrest memo has to be made and provided to each person arrested.

5.4 Further there are certain modalities that should be complied with at the time of arrest and pursuant to an arrest, which include the following:-

- (i) Arrest of a female should be carried out by or in the presence of a lady officer;

- (ii) Arrest memo should be attested by nominated person (such as member of family) of the person arrested or a respectable member of the locality from where the arrest is made;
- (iii) Medical examination of the arrested person should be conducted by a medical officer in the service of Central or State Governments and in case such medical officer is not available, by a registered medical practitioner soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case such female medical officer is not available, by a female registered medical practitioner;
- (iv) It shall be the duty of the officer having the custody of the arrested person to take reasonable care of the health and safety of the person arrested.

**Reports to be sent**

6.0 Chief Commissioners shall send a report on every arrest to the Zonal Member within 24 hours of the arrest giving such details as have been prescribed in the monthly report. To maintain an all India record of arrests made in Central Excise, a monthly report of all persons arrested in the Zone shall be sent by the Chief Commissioner to the DGCEI, Headquarters, New Delhi in the format, hereby prescribed and enclosed, by the 5<sup>th</sup> of the succeeding month.

7.0 All previous circulars on arrest and instructions in the Supplementary manual of instructions stand modified to the above extent.

Yours Faithfully,

(Pankaj Jain)

Under Secretary to the Govt. of India

Encl: as above

**Monthly Report on Persons Arrested in a Zone**

Sl No	Name , Designation and Age of the person arrested	Date of arrest	Commissionerate Concerned	Name and registration no of the company	Amount of Duty Evaded	Role in evasion and nature of evidence collected
Total						





## 178/4/2014-ST – ISD clarification

Dated : July 11, 2014

To,

Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax), Director General (Audit),  
Director General (Central Excise Intelligence),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

### **Sub: Manner of distribution of common input service credit under rule 7(d) of the Cenvat Credit Rules, 2004 -- regarding.**

Doubts have been raised regarding the manner and extent of the distribution of common input service credit in terms of amended rule 7 [especially rule 7(d)] of the Cenvat Credit Rules, 2004 (CCR). Rule 7 provides for the mechanism of distribution of common input service credit by the Input Service Distributor to its manufacturing units or to units providing output services. An amendment was carried out vide *Notification no. 05/2014-CE (N.T.)* dated 24th February, 2014, amending *inter-alia* rule 7(d) providing for distribution of common input service credit among all units in their turnover ratio of the relevant period. Rule 7(d), after the amendment, reads as under:

*'credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period'*

2. These doubts have arisen with respect to the meaning of the words 'such unit' used in rule 7(d). It has been stated in the representations that due to the use of the term 'such unit', the distribution of the credit would be restricted to only those units where the services are used. It has been interpreted by the trade that in view of the amended rule 7(d) of the CCR, the credit available for distribution would get reduced by the proportion of the turnover of those units where the services are not used.

3. Rule 7 was amended to simplify the method of distribution. Prior to this amendment there were a few issues raised by the trade regarding distribution of credit under rule 7 such as determining the turnover of each unit for each month and distributing by following the nexus of the input services with the units to which such services relate. The amendment in the said rule was carried out to address these issues. The amended rule 7(d) seeks to allow distribution of input service credit to all units in the ratio of their turnover of the previous year. To make the intent of the amended rule clear, illustration of the method of distribution to be followed is given below.

4. An Input Service Distributor (ISD) has a total of 4 units namely 'A', 'B', 'C' and 'D', which are operational in the current year. The credit of input service pertaining to more than one unit shall be distributed as follows:

Distribution to 'A' =  $\frac{X}{Y} * Z$

X = Turnover of unit 'A' during the relevant period  
Y = Total turnover of all its unit i.e. 'A'+ 'B'+ 'C'+ 'D' during the relevant period

Z = Total credit of service tax attributable to services used by more than one unit

Similarly the credit shall be distributed to the other units 'B', 'C' and 'D'.

**Illustration:**

An ISD has a common input service credit of Rs. 12000 pertaining to more than one unit. The ISD has 4 units namely 'A', 'B', 'C' and 'D' which are operational in the current year.

Unit	Turnover in the previous year (in Rs.)
A (Manufacturing excisable goods)	25,00,000
B (Manufacturing excisable and exempted goods)	30,00,000
C (providing exclusively exempted service)	15,00,000
D (providing taxable and exempted service)	30,00,000
Total	1,00,00,000

The common input service relates to units 'A', 'B' and 'C', the distribution will be as under:

(i)	Distribution to 'A'	= $12000 * 2500000/10000000$
		= 3000
(ii)	Distribution to 'B'	= $12000 * 3000000/10000000$
		= 3600
(iii)	Distribution to 'C'	= $12000 * 1500000/10000000$
		= 1800
(iv)	Distribution to 'D'	= $12000 * 3000000/10000000$
		= 3600

The distribution for the purpose of rule 7(d), will be done in this ratio in all cases, irrespective of whether such common input services were used in all the units or in some of the units.

5. Reference may be made to Sh. G. D. Lohani, Director (TRU) in case of any further doubt. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge receipt of this Circular.

6. Hindi version to follow.

**F.No.334/15/2014-TRU**

**(Dr. Abhishek Chandra Gupta)**  
Technical Officer, TRU

179/5/2014-ST – Joint Venture

F.No.354/187/2013-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
Tax Research Unit

North Block, New Delhi  
24<sup>th</sup> September, 2014

To,

Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax), Director General (Audit),  
Director General (Central Excise Intelligence),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: Service Tax -- Joint Venture - reg.**

Certain doubts have been raised regarding the levy of service tax on taxable services provided (i) by the members of the Joint Venture (JV) to the JV and vice versa; and (ii) inter se between the members of the JV. In addition, doubts have also been raised regarding taxation of cash calls or capital contribution made by the members to the JV and also administrative services provided by a member to the JV.

2. The issue has been examined. With effect from 1<sup>st</sup> July, 2012, under the negative list approach, all services are taxable subject to the definition of the service [available in section 65B (44) of the Finance Act, 1994], other than the services specified in the negative list [section 66D] and exemption notification [Notification No. 25/2012-ST]. According to Explanation 3(a) of the definition of service, "an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons". In accordance with the above explanation, JV and the members of the JV are treated as distinct persons and therefore, taxable services provided for consideration, by the JV to its members or vice versa and between the members of the JV are taxable.

3. In the context of a JV project, cash calls are capital contributions made by the members of JV to the JV. If cash calls are merely a transaction in money, they are excluded from the definition of service provided in section 65B(44) of the Finance Act, 1994. Whether a 'cash call' is 'merely... a transaction in money' [in terms of section 65B(44) of the Finance Act, 1994] and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

4. Detailed and close scrutiny of the terms of JV agreement may be required in each case, to determine the service tax treatment of cash calls. Some important aspects, by way of illustration, which could be examined in this regard, are:-

4.1 Taxable service provided by a JV to its members:

Cash calls, sometimes, could be in the nature of advance payments made by members towards taxable services to be received from the JV. For instance, JV which receives the cash call from its members may in return agree to do something of direct benefit either to the member or on the behest of a member to a third party, such as granting of right, reserving production capacity or providing an option on future supplies.

4.1.1 Taxable services received by a JV from its members or third party:

Payments made out of cash calls pooled by a JV, towards taxable services received from a member or a third party is in the nature of consideration and hence attracts service tax.

#### 4.2 Taxable services provided by members to the JV:

Usually responsibility of managing the cash calls of the JV is assigned to one or some of the members of the JV, by way of a contractual agreement, for which he/they may receive a consideration either in cash or kind (say, goods or services).

A member of JV may provide support services (for example, administrative service in the form of setting up/management of a project office/site office) to the JV for a consideration either in cash or kind (say, goods or services).

5. JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV. Therefore officers in the field formations are advised to carefully examine the leviability of service tax with reference to the specific terms/clauses of each JV agreement.

6. All concerned are requested to acknowledge the receipt of this circular.

[Dr. Abhishek Chandra Gupta]  
Technical Officer, TRU

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit

Room No 153, North Block, New Delhi  
Dated 14<sup>th</sup> October, 2014

To  
Chief Commissioner of Customs and Central Excise (All)  
Chief Commissioner of Central Excise & Service Tax (All)  
Director General of Service Tax  
Director General of Central Excise Intelligence  
Director General of Audit  
Commissioner of Customs and Central Excise (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)

Madam/Sir,

**Subject: - Levy of service tax on activities involved in relation to inward remittances from abroad to beneficiaries in India through MTSOs- reg.**

Vide circular No. 163/14/2012-ST, dated 10<sup>th</sup> July, 2012, on the issue of levy of service tax on the activities involved in the inward remittance it was clarified that there is no service tax *per se* on the foreign exchange remitted to India from outside for the reason that money does not constitute a service and that conversion charges or fee levied for sending such money would also not be liable to service tax as the person sending money and the company conducting the remittance are both located outside India. It was also clarified that the Indian bank or financial institution who provides service to the foreign bank or any other entity is not liable to service tax as the place of provision of service shall be the location of the recipient of service. This clarification covers the scenario where the Indian bank or financial institution provides services on principal to principal basis to the foreign bank/entity, on its own account, and thus the service is covered by the general rule, i.e. rule 3 of the Place of Provision of Service Rules, 2012.

2. However, subsequently, it had been brought to the notice of the Board that the foreign money transfer service operator (MTSO), conducting remittances to beneficiaries in India, have appointed Indian Banks/financial entities as their agents in India who provide agency /representation service to such MTSO for furtherance of their service to a beneficiary in India. The agents are paid a commission or fee by the MTSO for their services. The entire sequence of transactions in remittances of money from overseas through the MTSO route is as under:

**Step 1:** Remitter located outside India (say 'A') approaches a Money Transfer Service Operator (**MTSO**)/bank (say B) located outside India for remitting the money to a beneficiary in India; 'B' charges a fee from 'A'.

**Step 2:** 'B' avails the services of an Indian entity (**agent**) (say 'C') for delivery of money to the ultimate recipient of money in India (say 'E'); 'C' is paid a commission/fee by 'B'.

**Step 3:** 'C' may avail service of a **sub-agent** (D). 'D' charges fee/commission from 'C'.

**Step 4:** 'C' or 'D', as the case may be, delivers the money to 'E' and may charge a fee from 'E'.

3. Clarifications have been sought as to whether such agents (referred in Step 2 above) would fall in the category of intermediary, and if so, whether service tax would be leviable on the commission/fee amount charged by such agents. Clarifications have also been sought as to whether the services provided by sub agent (referred in step 3 & 4 above) are leviable to service tax and on certain other related issues.

4. The issues discussed above have been examined and it is clarified as follows,-

S.	Issues	Clarification
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No.		
1	Whether service tax is payable on remittance received in India from abroad?	No service tax is payable <i>per se</i> on the amount of foreign currency remitted to India from overseas. As the remittance comprises money, it does not in itself constitute any service in terms of the definition of 'service' as contained in clause (44) of section 65B of the Finance Act 1994.
2	Whether the service of an agent or the representation service provided by an Indian entity/ bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service?	Yes. The Indian bank or other entity acting as an agent to MTSO in relation to money transfer, facilitates in the delivery of the remittance to the beneficiary in India. In performing this service, the Indian Bank/entity facilitates the provision of Money transfer Service by the MTSO to a beneficiary in India. For their service, agent receives commission or fee. Hence, the agent falls in the category of intermediary as defined in rule 2(f) of the Place of Provision of Service Rules, 2012.
3	Whether service tax is leviable on the service provided, as mentioned in point 2 above, by an intermediary/agent located in India (in taxable territory) to MTSOs located outside India?	Service provided by an intermediary is covered by rule 9 (c) of the Place of Provision of Service Rules, 2012. As per this rule, the place of provision of service is the location of service provider. Hence, service provided by an agent, located in India (in taxable territory), to MTSO is liable to service tax.  The value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee.
4.	Whether service tax would apply on the amount charged separately, if any, by the Indian bank/entity/agent/sub-agent from the person who receives remittance in the taxable territory, for the service provided by such Indian bank/entity/agent/sub-agent	Yes. As the service is provided by Indian bank/entity/agent/sub-agent to a person located in taxable territory, the Place of Provision is in the taxable territory. Therefore, service tax is payable on amount charged separately, if any.
5.	Whether service tax would apply on the services provided by way of currency conversion by a bank /entity located in India (in the taxable territory) to the recipient of remittance in India?	Any activity of money changing comprises an independent taxable activity. Therefore, service tax applies on currency conversion in such cases in terms of the Service Tax (Determination of Value) Rules. Service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of the Service Tax Rules 1994
6.	Whether services provided by sub-agents to such Indian Bank/entity located in the taxable territory in relation to money transfer is leviable	Sub-agents also fall in the category of intermediary. Therefore, service tax is payable on commission received by sub-agents from Indian bank/entity.

to service tax?

5. Accordingly, Circular No. 163/14/2012-ST, dated 10.7.2012 stands superceded.
6. Trade Notice/Public Notice may be issued accordingly.
7. Please acknowledge the receipt of this circular. Hindi version to follow.

Yours sincerely,

(Dr. Abhishek Chandra Gupta)  
Technical Officer, TRU

**181/7/2014-ST - Audit**

F. No. 137/46/2014-Service Tax

New Delhi, the 10<sup>th</sup> December, 2014

To,

All Principal Chief Commissioners / Chief Commissioners of Central Excise/Service Tax

Principal Directors General/ Director General Service Tax/ DGCEI/Systems/ Audit  
All Principal Commissioners/Commissioners of Central Excise/Service Tax  
All Principal Additional Directors General/ Additional Directors General Audit

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Madam/Sir

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**Sub: Audit of the Service Tax assessees by the officers of Service Tax and Central Excise Commissionerates**

Section 94 of the Finance Act, 1994 deals with rule making powers of the Central Government in relation to service tax. Sub-section (2) of section 94, dealing with specific purposes for which rules can be made, was amended with effect from 06.08.2014, vide Section 114(J) of the Finance Act, 2014, and a new clause (k) was added to sub-section (2) of section 94, which is reproduced below -

*"(k) imposition, on persons liable to pay service tax, for the proper levy and collection of tax, of duty of furnishing information, keeping records and the manner in which such records shall be verified."*

2. In exercise of the rule making powers under clause (k) of sub-section (2) of section 94 of the Finance Act, 1994, the Central Government has inserted a new rule 5(A)(2) in the Service Tax Rules, 1994 vide notification no. 23/2014-Service Tax dated 5<sup>th</sup> December, 2014. This rule, interalia, provides for scrutiny of records by the audit party deputed by the Commissioner. Such scrutiny essentially constitutes audit by the audit party consisting of departmental officers.

3. Verification of records mandated by the statute is necessary to check the correctness of assessment and payment of tax by the assessee in the present era of self-assessment. It may be noted that the expression "verified" used in section 94(2)(k) of the said Act is of wide import and would include within its scope, audit by the departmental officers, as the procedure prescribed for audit is essentially a procedure for verification mandated in the statute.

4. It may also be noted that the Hon'ble High Court of Delhi in the judgment dated 04.08.2014 in the case of M/s Travelite (India) [2014-TIOL-1304-HC-DEL-ST] had quashed rule 5A(2) of the Service Tax Rules, 1994 on the ground that the powers to conduct audit envisaged in the rule did not have appropriate statutory backing. This judgment can now be distinguished as a clear statutory backing for the rule now exists in section 94(2)(k) of the said Act.

5. Departmental officers are directed to audit the Service Tax assessees as provided in the departmental instructions in this regard. Difficulty, if any, in implementing the circular may be brought to the notice of the Board. Hindi version will follow.

(Himani Bhayana)  
Under Secretary (Service Tax)

**995/2/2015-CX - Audit norms**

dated the 27<sup>th</sup> Feb., 2015

F. No. 206/03/2014-CX.6  
Government of India  
Ministry of Finance



Department of Revenue  
Central Board of Excise and Customs

To

The Principal Chief Commissioners/Chief Commissioners of Central Excise and Service Tax (All),  
The Director General of Service Tax,  
The Director General of Central Excise Intelligence,  
The Commissioners of Service Tax (Audit) (All)  
The Commissioners of Central Excise (Audit) (All)

Madam/Sir,

**Subject: Central Excise and Service Tax Audit norms to be followed by the Audit Commissionerates-reg**

1. Audit Commissionerates have been created with an objective to improve the functional efficiency of audit in the field formations. An effective taxpayer audit plays a key role in improving compliance and augmenting tax revenues. It is one of the important compliance verification tools available to the tax administration to verify the correctness of the taxes self-assessed and reported in the tax returns besides complying with other legal obligations.
2. In the past, norms / guidelines were issued by the Board for conduct of audit by the Commissionerates. The existing norms / guidelines for selection of units for audit are based on a single criterion, namely, the threshold limit of taxes paid in the previous Financial Year. Taxpayers are categorized into mandatory and non-mandatory units based on taxes paid and the units are required to be audited as per the frequency norms stipulated for each category. The criteria adopted do not take into account the risk factors and the resources available for undertaking audit. The uniform norms and frequency prescribed for conducting audits across the Commissionerates also do not factor in crucial inputs such as the assessee base, availability of manpower and the risk indicators for selection of units for conducting audit. The audit coverage in Service Tax has been below the satisfactory levels on account of huge taxpayer base and limited availability of manpower in major cities such as Mumbai, Delhi, Bengaluru, etc.
3. In the background of creation of exclusive Commissionerates to deal with audit and having regard to the difficulties faced, and also the experience gained with regard to audit coverage in the past, it has been decided to revise the existing norms for conduct of audit and issue fresh norms / guidelines taking into account the availability of manpower in the Audit Commissionerate. The new norms move away from the concept of mandatory and non-mandatory audits and do not prescribe any frequency for conducting audits. The new norms introduce risk based selection of assessees for audit based on identified/quantified risk parameters and also introduce jurisdictional specific criteria (as opposed to uniform norm across the country) for segmenting the taxpayer into large, medium & small categories.
4. In this regard, the following guidelines are issued in supersession of the earlier guidelines:

**Annual plan for Audit Coverage:**

5.0 The Audit Commissionerate would release an Annual plan by 31<sup>st</sup> May, indicating the names of Assesseees that are proposed to be audited during the course of the year (period between 1<sup>st</sup> July to 30<sup>th</sup> June of the next year) and the month in which the Audit officers would visit the units for verification of records. The Audit coverage (i.e. numbers of units selected for Audit in a year) may be calibrated with the manpower availability in a Commissionerate. The working strength of officers in Audit Commissionerate would be taken as the basis for calibration.

5.1 In order to ensure adequate coverage, the Assesseees/Taxpayers shall be grouped in three categories namely Large, Medium and Small units. Given the past experience in detection of non-compliance and recovery of duty through Audits, it is suggested that Audit groups may be deployed to cover Large, Medium and Small units as follows:

- a) 40 % of manpower to Large units

- b) 25 % of manpower to Medium units
- c) 15 % of manpower to Small units
- d) 20 % of manpower for planning, coordination and follow up.

5.2 The composition of Audit Groups to cover Large, Medium and Small units may be done as follows:

- a) 2 - 3 Superintendents and 3 - 5 Inspectors for the conduct of audit of Large assessees / taxpayers.
- b) 1 - 2 Superintendent and 2 - 3 Inspectors for conduct of audit of Medium assessees / taxpayers.
- c) 1 Superintendent and 1 - 2 Inspectors for Small assessees / taxpayers.

Assistant / Deputy Commissioners may lead the Audit Groups in select cases.

5.3 The indicative duration for conduct of audit that is inclusive of desk review, preparation and approval of Audit plan, actual Audit and preparation of Audit report wherever necessary, for each category would be as under:

- a) Large assessees / taxpayers - 6 to 8 working days
- b) Medium assessees / taxpayers - 4 to 6 working days.
- c) Small assessees / taxpayers - 2 to 4 working days

5.4 Given that there are around 249 working days in a year, the number of Audits that can be approximately conducted in a year are as follows:

- a) 31 Large units (calculated at 8 days per unit) by one Audit party
- b) 42 Medium units (calculated at 6 days per unit) by one Audit party and
- c) 62 Small units (calculated at 4 days per Audit) by one Audit party

5.5 The aforementioned number of Audits could be then multiplied by the number of Audit teams prepared for each category to arrive at the total number of Audits that can be conducted by each Commissionerate during the year.

5.6 The manner of deployment of officers as mentioned above and calculation of number of units that can be audited during the year are illustrated below:

i. Suppose the working strength of an Audit Commissionerate is 60 Superintendents and 80 Inspectors. The deployment of officers would be: 24 Superintendents and 32 Inspectors for large units, 15 Superintendents and 20 Inspectors for medium units and 9 Superintendents and 12 Inspectors for small units and 12 Superintendents and 16 Inspectors in Headquarters. To the extent possible, the manpower distribution amongst the Circles within an Audit Commissionerate should be proportional to the large, medium and small Assessee base in the Circle. In other words, the 24 Superintendents and 32 Inspectors designated for large Assessees would be divided amongst the Circles proportional to the number of large Assessees under each Circle. The deployment has to be done in similar manner for medium and small units.

ii. Using the manpower as above, there would be around 10 teams for large units, 12 teams for Medium units and 6 teams for Small units in the Commissionerate. The total number of units that could be audited in a year thus works out to around 310 large units, 504 medium units and 372 small units i.e. 1186 units in all. The Commissioners could exercise necessary reallocation of officers to Medium units, if the audit of Large units is completed. Thus, each Commissionerate can carry out the calculations based on the working strength.

5.7 The criteria for categorizing an assessee / taxpayer as large, medium or small would be (a) annual value of clearances and total duty paid in case of Central Excise and/or (b) value of services rendered and services received (which are dutiable on reverse charge basis) and total duty paid in the case of Service Tax. The threshold limits of value of clearances / value of services for categorizing the units into large, medium and small would be dependent upon (i) the available manpower in the Audit Commissionerate and (ii) the Assessee base, turnover and duty paid by each Assessee in the jurisdiction of the Audit Commissionerate. It may be noted that threshold limits may vary from one Audit Commissionerate to another Audit Commissionerate in view of varying number of Assessees and quantum of value of clearances / services and duty paid in case of each Assessee. The Audit Commissionerates would obtain the requisite data from EDW / ACES / EASIES for categorization of Assessees into

large / medium / small within their Commissionerate. The categorization would be done based on the methodology prescribed by the Directorate General of Audit. The methodology for categorization would be communicated to the Audit Commissionerates by Directorate General of Audit during the month of March / April every year.

5.8 The Audit Commissionerates shall consult zonal units of Directorate General of Audit while finalizing the Annual plan of Audit coverage with the available manpower at the beginning of the financial year. The scheduling can be reviewed half yearly for necessary adjustments, if any. The Directorate General of Audit will also periodically review and revise, wherever necessary, the criteria for categorizing the units into large, medium and small within each Zone / Commissionerate, manpower deployment in each category, composition of audit team and number of days required for audit in each category. The review / revision would be done in consultation with the Audit Commissionerates so as to ensure that Audit coverage by officers is made optimal.

5.9 The Chief Commissioner may allow temporary reallocation / diversion of officers amongst the Audit Commissionerates to ensure adequate Audit coverage of all categories of Assesseees / Taxpayers falling under the jurisdiction of the zone.

**Selection methodology:**

6.0 The selection of Assesseees would be done based on the risk evaluation method prescribed by the Directorate General of Audit. The risk evaluation method would be separately communicated to the Audit Commissionerates during the month of March / April every year. The risk assessment function will be jointly handled by National Risk Managers (NRM) situated in the Directorate General of Audit and Local Risk Managers (LRM) heading the Risk Management section of Audit Commissionerates. The Risk Management section of Audit Commissionerate would ensure availability of Assessee / Taxpayer wise data for a period of last three years, which would facilitate risk assessment and preparation of the list of assesseees that would be audited in the current year.

6.1 The Audit Commissionerates could also select few units at random or based on local risk perception in each category of large, medium and small tax payers. The results of Audit and the feedback from random selection would help in evaluating parameters used for selection process.

6.2 The Audit Commissionerates after preparing the annual plan of Audit coverage as indicated above, would also prepare a list of units where risk can be mitigated through detailed scrutiny of returns and convey the details to the Executive Commissioners for taking necessary action. The selection of such units can be carried out at zonal level so that the Audit and detailed scrutiny complement each other. The list of such units and reason for selection should be shared with the Directorate General of Audit.

6.3 The above norms would become operative from 1st July 2015. Directorate General of Audit will review the efficacy of the above parameters as well as frequency of audits in consultation with Audit Commissionerates.

**Theme based coordinated Audits**

7.0 Theme based coordinated Audits at all India level would be conducted by concerned Audit Commissionerates in a synchronized manner. The theme would be selected by the Directorate General of Audit based on systematic and methodical risk analysis of internal taxpayer data (from ACES and EDW), economic indicators, third party information from tax and other regulatory authorities and other relevant sources of data. Directorate General of Audit would also consult trade, industry and service providers from time to time, wherever necessary. The theme would be intimated well in advance, say four to six months, to the field formations. Detailed questionnaires would be prepared as guidance to the Audit parties. The dates for such Audits would be fixed in advance, say sometime in December every year, so that they can be blocked by the Commissionerates. The number of such Audits will be one or at best two in a year. The selection of theme / issue, coordination and dissemination would be done by DG(Audit) in consultation with the field formations.

7.1 The theme based coordinated Audits would also be carried out at the Zonal level. The theme for the Audit, which could be a sensitive commodity or a service, would be selected at the zonal level and simultaneous and coordinated Audit would be carried out within the zone. The number of such Audits will again be one or two in a year. The theme for the Audit would be selected based on analysis of data provided by ACES, EDW and relevant third party information identified from time to time. The Chief Commissioner may involve the zonal units of Directorate General of Audit in selection of theme, planning and execution of theme based Audit.

### **Audit of Multi Locational Units**

8. In case of multi-locational units and multi-locational Service Providers, as prescribed in the Central Excise Audit Manual and Service Tax Audit Manual respectively, the zonal units of the Directorate General of Audit will continue to coordinate the audit of multi-locational manufacturing units and multi-locational service providers. In case of multi-locational units located with one zone under different Audit Commissionerates, the coordination will be carried out at the zonal level by one of the Audit Commissionerates. For this purpose, wherever there are more than one Audit Commissionerate in a zone, the Principal Chief Commissioner / Chief Commissioner may designate one of the Audit Commissionerate for undertaking such coordination and for identifying units based on common PAN for the purposes of integrated Audit.

### **Accredited status for deferring frequency of Audit**

9. There can be a segment of Assesseees, who could be given "accredited" status, similar to the one given in Customs, based on their proven track record of compliance with tax laws and procedures. Such identified assesseees need not be subjected to Audit in every cycle. It has been decided that the frequency or periodicity of audit in their case would not be less than 3 years. The procedure and criteria for accreditation are under examination and would be communicated separately.

### **Audit of LTUs**

10. In case of LTUs, 80% of the manpower may be used for conducting audits and 20% of the manpower may be used for headquarters functions. The Audit Group would comprise 2-4 Superintendents and 3-6 Inspectors. The indicative duration for conduct of audit that is inclusive of desk review, preparation and approval of Audit plan, actual audit and preparation of Audit report is 8 to 10 working days. Based on the recommended duration, the number of units that could be audited in a year would be 25 LTUs (calculated at 10 days per Audit) by one Audit group. The Audit groups from LTU Audit Commissionerate's Circles would conduct the audit of LTUs and wherever additional manpower assistance is required the same can be sought from other LTUs or the jurisdictional Central Excise/Service Tax Audit Commissionerate. Further, audit of the LTU should be conducted in a coordinated manner i.e., the audit of Head Office and group units should be conducted simultaneously. For this purpose, the audit dates should be decided in consultation with the LTU. The total number and selection of individual assesseees for audit would be done as per the risk evaluation method recommended by the Directorate General of Audit.

### **Removal of difficulty**

11. Past guidelines and instructions on the subject stand modified to the extent they are in conflict with these guidelines. Difficulties faced, if any in the implementation of above instructions may be brought to the notice of the Board and Directorate General of Audit at an early date. The Principal Chief Commissioners and Chief Commissioners are authorized to issue appropriate instructions, to be valid for temporary periods, to remove any difficulty in conduct of audits which are important from the perspective of augmentation of revenue.

Kindly acknowledge receipt.

**(ROHAN)**

Under Secretary to the Government of India

**182/01/2015 –ST - Payment**

F.No. 137/155/2012-Service Tax (Pt -II)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
Service Tax Wing

New Delhi, the 27<sup>th</sup> March 2015

To

The Principal Chief Commissioners/Chief Commissioners of Central Excise and Service Tax (All),  
The Director General of Service Tax,  
The Director General of Systems & Data Management,  
The Director General of Central Excise Intelligence,  
The Commissioners of Service Tax (Audit) (All)  
The Commissioners of Central Excise (Audit) (All)  
Subject: Extension of e-payment deadline and of banking hours

Madam/Sir,

The Reserve Bank of India has issued instructions vide RBI/2014-15/515 dated March 25, 2015 wherein it has been decided that all agency banks shall keep the counters of their designated branches conducting government business open for full day on March 30, 2015, and till 8.00 p.m. on March 31, 2015. All electronic transactions would, however, continue till midnight of March 31, 2015.

2. Thus the assesseees can make e payment till the mid night of March 31, 2015.

3. It is requested that the trade notice may be issued to publicize the extended e payment hours as well as the extended banking hours.

Yours faithfully,  
(Rajeev Yadav)  
Director (Service Tax)

**183 / 02 / 2015-ST – Rate of Service Tax**

**F. No. B-1 /1/2015-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
(Tax Research Unit)**

Room No. 153, North Block, New Delhi.  
Dated 10<sup>th</sup> April, 2015.

To

Chief Commissioner of Customs and Central Excise(All)  
Chief Commissioner of Central Excise & Service Tax (All)

Director General of Service Tax  
Director General of Central Excise Intelligence  
Director General of Audit Commissioner of Customs and Central Excise (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All) Madam/Sir,  
Dear Madam/Sir,

**Subject:** Clarification on rate of service tax - regarding.

Doubts have been expressed in various forums regarding the proposed increase in the rate of service tax from 12.36% (including education cesses) to 14% on the value of taxable service.

2. It may be noted that changes proposed in the Budget have/are coming into effect on various dates as already indicated in JS (TRU-II) D.O. letter dated 28<sup>th</sup> February, 2015. Certain amendments made in the Finance Act, 1994, including the change in service tax rate, will come into effect from a date to be notified by the Government after the enactment of the Finance Bill, 2015.

3. In this regard your attention is invited to clause 106 of the Finance Bill, 2015 and paragraph 3 of JS (TRU-II) D.O. letter, which is reproduced below:-

"3. Service Tax Rate:

3.1 The rate of Service Tax is being increased from 12% plus Education Cesses to 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax. Thus, the effective increase in Service Tax rate will be from the existing rate of 12.36% (inclusive of cesses) to 14%, subsuming the cesses.

3.2 In this context, an amendment is being made in section 66B of the Finance Act, 1994. Further, it has been provided vide clauses 179 and 187 respectively of the Finance Bill, 2015 that sections 95 of the Finance Act, 2004 and 140 of the Finance Act, 2007, levying Education Cess and Secondary and Higher Education Cess on taxable services shall cease to have effect from a date to be notified by the Government.

3.3 The new Service Tax rate shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015.

3.4 Till the time the revised rate comes into effect, the 'Education Cess' and 'Secondary and Higher Education Cess' will continue to be levied in Service Tax."

4. The paragraph reproduced above is self-explanatory and it is clear that the new Service Tax rate shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015. The date will be notified in due course after the enactment.

5. Similarly, certain doubts have been raised with regard to abatement on value of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year. Valuation of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess is determined as provided in rule 2C of the Service Tax (Determination of Value) Rules, 2006.

5.1 In the Union Budget, 2015, no change has been made in these rules; therefore, any confusion is unwarranted. Further, as explained above, the rate of service tax on the specified portion of the amount charged for such supply which is 40% continues to be 12.36% (including cesses) at present i.e. 4.944 %. The rate of Service tax, as discussed above, will continue unchanged till a date which will be notified in due course.

6. Wide publicity may be given so that the assesses and public are aware of the above. All the major Industry/Trade Associations may be informed accordingly.

Yours sincerely,  
(Dr. Abhishek Chandra Gupta)  
Technical Officer, TRU

184/3/2015-ST – Restaurant service

Dated the 3<sup>rd</sup> June, 2015

**F. No. 334 / 5 /2015-TRU  
(Pt.) Government of India  
Ministry of Finance  
Department of Revenue  
(Tax Research Unit)**

Dated 3<sup>rd</sup> June,2015

To

Chief Commissioner of Customs and Central Excise (All) Chief  
Commissioner of Central Excise & Service Tax (All) Director  
General of Service Tax

Director General of Central Excise Intelligence

Director General of Audit,

Principal Commissioner/Commissioner of Customs and Central Excise (All)  
Principal Commissioner/Commissioner of Central Excise and Service Tax (All)  
Principal Commissioner/Commissioner of Service Tax (All)

Madam/Sir,

**Subject:** Clarification on rate of service tax on restaurant service - regarding.

The Service Tax rate has been increased to 14% with effect from 1<sup>st</sup> June, 2015. Certain doubts have been raised in regard to abatement on value of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, **having the facility of air-conditioning or central air-heating** in any part of the establishment, at any time during the year.

2. Matter has been examined. Valuation of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess **having the facility of air-conditioning or central air-heating in any part of the establishment**, is determined as provided in rule 2C of the Service Tax (Determination of Value) Rules, 2006. In the said rule, 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 has been specified as 40 percentage of the total amount charged for such supply. In Budget, 2015, no change has been made in abatement and the rate of service tax on the abated value has been increased to 14% with effect from 1<sup>st</sup> June, 2015. Therefore, effective service tax rate would be 5.6% (14% of 40%) of the total amount charged. Hence, with the increase in the applicable rate of service tax from 12.36% (including education cesses) to 14%, the effective rate on such establishments has increased from 4.9% to 5.6% of the total amount charged.

3. It is further clarified that exemption from service tax still continues to 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.



4. All concerned are requested to acknowledge the receipt of this circular.

5. Trade Notice/ Public Notice to be issued. Wide publicity through local news media including vernacular press may be given. Hindi version shall follow.

Yours faithfully,

(Akshay Joshi)

Under Secretary to Government of India

**186/5/2015-ST – Various Services provided by GTA**

F. No. 354 / 98 /20015-TRU

New Delhi, dated 5<sup>th</sup> October, 2015

To,

Principal Chief Commissioner / Chief Commissioner of Central Excise, Service Tax and Customs (All),

Director General of Service Tax

Director General of Audit

Director General of Central Excise Intelligence Principal Principal Commissioners of Service Tax (All)

Commissioners of Service Tax (All)

Commissioner (DPPR)

Sir/ Madam,

Subject: - Service tax levy on services provided by a Goods Transport Agency -reg.

The All India Transport Welfare Association (AITWA) has represented regarding the difficulties being faced by the Goods Transport Agencies (GTAs) in respect of service tax levy on the services of goods transport. Doubts has been raised by the All India Motor Transport Congress (AIMTC) regarding treatment given to various services provided by GTAs in the course of transportation of goods by road.

2. The issue has been examined. Since July 1, 2012, service tax has shifted to a negative list regime, by which all the services except those covered in negative list as mentioned in section 66D of the Finance Act, 1994 or those exempted by notification are chargeable to service tax.

3. Goods Transport Agency (GTA) has been defined to mean any person who provides service to a person in relation to transport of goods by road and issues consignment note, by whatever name called. The service provided is a composite service which may include various ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc., which are provided in the course of transportation of goods by road. These ancillary services may be provided by GTA himself or may be sub-contracted by the GTA. In either case, for the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of ancillary services provided in the course of transportation of goods by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road.

4. A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The interpretation of specified descriptions of services in such cases shall be based on the principle of interpretation enumerated in section 66 F of the Finance Act, 1994. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it.

5. It is also clarified that transportation of goods by road by a GTA, in cases where GTA undertakes to reach/deliver the goods at destination within a stipulated time, should be considered as 'services of goods transport agency in relation to transportation of goods' for the purpose of notification No. 26/2012-ST dated 20.06.2012, serial number 7, so long as (a) the entire transportation of goods is by road; and (b) the GTA issues a consignment note, by whatever name called.

6. Pending disputes on the above issues may accordingly be decided expeditiously.

Yours faithfully,

(Dr. Ravindra Kumar)  
Technical Officer, TRU-II

**1009/16/2015-CX – Guidelines for Prosecution**

F. No. 96/54/2014-CX.1  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

New Delhi, dated the 23<sup>rd</sup> October, 2015

To

Principal Chief Commissioner/ Chief Commissioner of Central Excise (All),  
Principal Chief Commissioner/ Chief Commissioner of Central Excise and Service Tax (All),  
Madam/ Sir,

**Sub: Central Excise – Guidelines for launching of Prosecution under the Central Excise Act, 1944 and Finance Act, 1994 regarding Service tax-reg.**

I am directed to refer to following circulars/instructions issued by the Board regarding guidelines for launching of prosecution under the Central Excise Act, 1944 and the Finance Act, 1994:

1. Circular No. 15/90-CX.6 dated 09.08.1990 issued from F. No. 218/7/89-CX.6.
2. Circular No. 30/30/94-CX dated 04.04.1994 issued from F. No. 208/20/93/CX.6.
3. Letter F. No. 208/31/97-CX.6 dated 04.04.1994 regarding enhancement of monetary limit.

4. Circular No. 35/35/94-CX dated 29.04.1994 issued from F. No. 208/22/93-CX.6.
5. Letter F. No. 203/05/98-CX.6 dated 06.04.1998 regarding making DG, CEI competent authority to sanction prosecution in respect of cases investigated by DGCEI.
6. Letter F. No. 208/05/98-CX.6 dated 20.10.1998.
7. Letter F. No. 208/21/2007-CX.6 dated 15.06.2007.
8. Circular no 140/9/2011-Service Tax dated 12-5-2011.

2. In supersession of these instructions and circulars, following consolidated guidelines are hereby issued for launching prosecution under the Central Excise Act, 1944 and the Finance Act, 1994.

### **3. Person liable to be prosecuted**

3.1 Whoever commits any of the offences specified under sub-section (1) of Section 9 of the Central Excise Act, 1944 or sub-section (1) of section 89 of the Finance Act, 1994, can be prosecuted. Section 9AA (1) of Central Excise Act, 1944 provides that where an offence under this Act has been committed by a company, every person who, at the time offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Section 9AA (2) of Central Excise Act, 1944 provides that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation to Section 9AA provides that (a) "Company" means anybody corporate and includes a firm or other association of individuals and (b) "director" in relation to a firm means a partner of the firm. These provisions under Section 9AA of Central Excise Act, 1944 have been made applicable to Service Tax also vide Section 83 of the Finance Act, 1994.

### **4. Monetary limits: Central Excise and Service Tax**

4.1 **Monetary Limit:** In order to optimally utilize limited resources of the Department, prosecution should normally not be launched unless evasion of Central Excise duty or Service Tax, or misuse of Cenvat credit in relation to offences specified under sub-section (1) of Section 9 of the Central Excise Act, 1944 or sub-section (1) of section 89 of the Finance Act, 1994 is equal to or more than **Rs. One Crore**.

4.2 **Habitual evaders:** Notwithstanding the above limits, prosecution can be launched in the case of a company/assessee habitually evading tax/duty or misusing Cenvat Credit facility. A company/assessee would be treated as habitually evading tax/duty or misusing Cenvat Credit facility, if it has been involved in three or more cases of confirmed demand (at the first appellate level or above) of Central Excise duty or Service Tax or misuse of Cenvat credit involving fraud, suppression of facts etc. in past five years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than **Rs. One Crore**. Offence register (335J) may be used to monitor and identify assesseees who can be considered to be habitually evading duty.

4.3 Sanction of prosecution has serious repercussions for the assessee and therefore along with the above monetary limits, the nature of evidence collected during the investigation should be carefully assessed. The evidences collected should be adequate to establish beyond reasonable doubt that the person, company or individual had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens-rea (guilty mind) for committing the offence.

### **5. Authority to sanction prosecution**

5.1 The criminal complaint for prosecuting a person should be filed only after obtaining the sanction of the Principal Chief/Chief Commissioner of Central Excise or Service Tax as the case may be.

5.2 In respect of cases investigated by the Directorate General of Central Excise Intelligence (DGCEI), the criminal complaint for prosecuting a person should be filed only after obtaining the sanction of Principal Director General/ Director General, CEI.

5.3 An order conveying sanction for prosecution shall be issued by the sanctioning authority and forwarded to the Commissionerate concerned for taking appropriate action for expeditious filing of the complaint.

### **6. Procedure for sanction of prosecution**

6.1 Prosecution proposal should be forwarded to the Chief Commissioner / Principal Chief Commissioner or Director General / Principal Director General of DGCEI ( in respect of cases booked by DGCEI) after the case has been carefully examined by the Commissioner/Principal Commissioner or Additional Director General /Principal Additional Director General of DGCEI who has adjudicated the case. In all cases of arrest, examination of the case to ascertain fitness for prosecution shall be necessarily carried out.

6.2 Prosecution should not be launched in cases of technical nature, or where the additional claim of duty/tax is based totally on a difference of opinion regarding interpretation of law. Before launching any prosecution, it is necessary that the department should have evidence to prove that the person, company or individual had guilty

knowledge of the offence, or had fraudulent intention to commit the offence, or in any manner possessed mens rea (guilty mind) which would indicate his guilt. It follows, therefore, that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but it should be restricted to only against persons who were in charge of day-to-day operations of the factory and have taken active part in committing the duty/tax evasion or had connived at it.

6.3 Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings particularly in cases of technical nature or where interpretation of law is involved. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher as the case has to be established beyond reasonable doubt whereas the adjudication proceedings are decided on the basis of preponderance of probability. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the test of being beyond reasonable doubt for recommending prosecution. Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty/tax evaded or Cenvat credit wrongly availed and the nature as well as quality of evidence collected.

6.4 Decision on prosecution should be normally taken immediately on completion of the adjudication proceedings. However, Hon'ble Supreme Court of India in the case of Radheshyam Kejriwal [2011(266)ELT 294 (SC)] has *inter alia*, observed the following :- "(i) adjudication proceedings and criminal proceedings can be launched simultaneously; (ii) decision in adjudication proceedings is not necessary before initiating criminal prosecution; (iii) adjudication proceedings and criminal proceedings are independent in nature to each other and (iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution." Therefore, prosecution may even be launched before the adjudication of the case, especially where offence involved is grave, qualitative evidences are available and it is also apprehended that party may delay completion of adjudication proceedings.

6.5 Principal Commissioner/Commissioner or ADG (Adjudication) acting as adjudicating authority should indicate at the time of passing the adjudication order itself whether he considers the case to be fit for prosecution so that it can be further processed and sent to Principal Chief Commissioner/ Chief Commissioner or Principal Director General/ Director General of DGCEI, as the case may be, for sanction of prosecution. Where at the time of adjudication proceedings no view has been taken on prosecution by the Adjudicating Authority then the adjudication wing shall re-submit the file within 15 days from the date of issue of adjudication order to the Adjudicating Authority to take view of prosecution. Where, prosecution is proposed before the adjudication of the case, Commissioner/Principal Commissioner or Principal Additional Director General/Additional Director General, DGCEI who supervised the investigation shall record the reason for the same and forward the proposal to the sanctioning authority. The adjudicating authority shall also be informed of the decision to forward the proposal so that there is no need for him to examine the case at the time of passing of adjudication order from the perspective of prosecution. Principal Chief Commissioner/ Chief Commissioner or Principal Director General/ Director General of DGCEI may on his own motion also, taking into consideration the seriousness of an offence, examine whether the case is fit for sanction of prosecution irrespective of whether the adjudicating authority has recommended prosecution.

6.6 In respect of cases investigated by DGCEI, the adjudicating authority would intimate the decision taken regarding fitness of the case for prosecution to the Principal Additional Director General/ Additional Director General of the Zonal Unit or Headquarters concerned, where the case was investigated and show cause notice issued. The officers of unit of Directorate General of Central Excise Intelligence concerned would prepare an investigation report for the purpose of launching prosecution, within one month of the date of receipt of the decision of the adjudicating authority and would send the same to the Director General, CEI for taking decision on sanction of prosecution. The format of investigation report is annexed as **Annexure-I** to this Circular.

6.7 In respect of cases not investigated by DGCEI, where the Principal Commissioner/Commissioner who has adjudicated the case is satisfied that prosecution should be launched, an investigation report for the purpose of launching prosecution should be carefully prepared within one month of the date of issuance of the adjudication order. Investigation report should be signed by an Assistant/Deputy Commissioner, endorsed by the jurisdictional Principle Commissioner/Commissioner and sent to the Principal Chief/ Chief Commissioner for taking a decision on sanction for launching prosecution. The format of investigation report is annexed as **Annexure-I** to this circular. A criminal complaint in a court of law should be, filed by the jurisdictional Commissionerate only after the sanction of the Principal Chief / Chief Commissioner or Principal Director General/Director General of DGCEI has been obtained.

6.8 Principal Commissioner/Commissioner or Additional Director General (Adjudication) shall submit a report by 10<sup>th</sup> of every month to the Principal Chief /Chief Commissioner or the Principal Director General/ Director General of CEI, who is the sanctioning authority for prosecution, conveying whether a view on launching prosecution has been taken in respect of adjudication orders issued during the preceding month.

6.9 Once the sanction for prosecution has been obtained, criminal complaint in the court of law should be filed as early as possible by an officer of the jurisdictional Commissionerate authorized by the Commissioner.

6.10 It has been reported that delays in the Court proceedings are often due to non-availability of the records required to be produced before the Magistrate or due to delay in drafting of the complaint, listing of the exhibits etc. It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody. Where a complaint has not been filed even after a lapse of three months from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of the Principal Chief/ Chief Commissioner or the Principal Director General or Director General of DGCEI by the Principal Commissioner/ Commissioner in charge of the Commissionerate responsible for filing of the complaint.

## **7. Monitoring of Prosecution**

7.1 Prosecution, once launched, should be vigorously followed. The Principal Commissioner/Commissioner of Central Excise/Service Tax should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory. In DGCEI, an Additional/ Joint Director in each zonal unit and DGCEI (Hqrs) shall supervise the prosecution related work. For keeping a track of prosecution cases, a prosecution register in the format enclosed as **Annexure-II** to this Circular should be maintained in the Prosecution Cell of each Commissionerate. The register shall be updated regularly and inspected by the Principal Commissioner/Commissioner at least once in every quarter of a financial year.

7.2 For keeping a track of prosecution cases, a prosecution register in the format enclosed as **Annexure-III** to this Circular should be maintained in the Zonal Units of DGCEI and DGCEI (Hqrs.) pertaining to cases investigated by them.

## **8. Appeal against Court order in case of inadequate punishment/acquittal:**

8.1 Principal Commissioner/Commissioner responsible for the conduct of prosecution or Principal Additional Director General or Additional Director General of DGCEI (in respect of cases booked by DGCEI), should study the judgement of the Court and, where it appears that the accused person have been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, appeal should be considered against the order. Sanction for appeal in such cases shall be accorded by Principal Chief/ Chief Commissioner or Principal Director General/ Director General of DGCEI.

## **9. Publication of names of persons convicted:**

9.1 Section 9B of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act, 1994 grants power to publish name, place of business etc. of the person convicted under the Act by a Court of Law. The power is being exercised very sparingly by the Courts. It is directed that in deserving cases, the department should make a prayer to the Court to invoke this section in respect of all persons who are convicted under the Act.

## **10. Procedure for withdrawal of Prosecution:**

### **10.1 Procedure for withdrawal of sanction-order of prosecution**

10.1.1 In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidences have come to light necessitating review of the sanction for prosecution, the Commissionerate or the DGCEI unit concerned should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidences, the sanctioning authority namely Principal Chief/ Chief Commissioner or Principal Director General or Director General of DGCEI, if satisfied, may recommend to the Board (Member of the policy wing concerned) that the sanction for prosecution be withdrawn.

### **10.2 Procedure for withdrawal of Complaint already filed for prosecution**

10.2.1 In cases where the complaint has already been filed complaint may be withdrawn as per Circular No. 998/5/2015-CX dated 28.02.2015 which provides that where on identical allegation a noticee has been exonerated in the quasi-judicial proceedings and such order has attained finality, Principal Chief Commissioner/ Chief Commissioner or the Principal Director General/ Director General of DGCEI shall give direction to the concerned Commissionerate to file an application through Public Prosecutor requesting the Court to allow withdrawal of the Prosecution in accordance with law.

## **11. Transitional Provisions**

11.1 All cases where sanction for prosecution is accorded after the issue of this circular shall be dealt in accordance with the provisions of this circular irrespective of the date of the offence. Cases where prosecution has been sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority in light of the provisions of this circular.

## **12. Compounding of offences**

12.1 Section 9A(2) of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act, 1994 provides for compounding of offences by the Principal Chief/ Chief Commissioner on payment of compounding amount. Circular no. 54/2005-Cus dt 30-12-2005 and Circular no 862/20/2007-CX-8 dated 27-12-

2007 on the subject of compounding of offences may be referred in this regard which inter alia provides that all persons against whom prosecution is initiated or contemplated should be informed in writing, the offer of compounding.

**13. Inspection of prosecution work by the Directorate of Performance Management:**

13.1 Director General, Directorate of Performance Management and Chief Commissioners, who are required to inspect the Commissionerates, should specifically check whether instruction contained in this Circular are being followed scrupulously and to ensure that reasons for pendency and non-compliance of pending prosecution cases are looked into during field inspections apart from recording of statistical data.

14. The field formations may suitably be informed. Receipt of this Circular may please be acknowledged. Hindi version will follow.

Yours faithfully,

(ROHAN)

Under Secretary to the Govt. of India

**Annexure-I**

F. No.

**INVESTIGATION REPORT FOR THE PURPOSE OF LAUNCHING PROSECUTION AGAINST  
COMMISSIONERATE DIVISION**

1. Name & address of the person(s) (including legal person(s):
2. Central Excise/Service Tax Registration No.(If any):
3. Nature of offence including commodity:
4. Charges:
5. Period of offence:
6. Amount of evasion involved
7. Particular of persons proposed to be prosecuted :
  - a. Name:
  - b. Father's Name:
  - c. Age : Sex:
  - d. Address:
  - e. Occupation:
  - f. Position held in the Company/Firm:
  - g. Role played in the offence :
  - h. Material evidence available against the accused (please indicate separately documentary and oral evidence).
  - i. Action ordered against the accused in adjudication.
8. Brief note why prosecution is recommended :

(Deputy/Assistant Commissioner or Deputy/ Assistant Director, DGCEI)

Place

Date

9. I have carefully examined the Investigation Report and find it in order for filling criminal complaint under Section 9 and 9AA of the Central Excise Act, 1944.

(Commissioner, Central Excise\_\_\_\_\_)/

(Additional Director General, DGCEI-----)

Place

Date

1. The proposal should be made in the above form in conformity with the guidelines issued by the Ministry. With regard to column 4 above, all the charging sections in the Central Excise Act/Service Tax and other allied Acts should be mentioned. With regard to column 7, information should be filled separately for each person sought to be prosecuted.

2. A copy of the Show Cause Notice as well as the Order of Adjudication (Wherever adjudication has been issued) should be enclosed with this report.
3. If any appeal has been filed, then this fact should be specifically stated.

**Annexure-II**

**FORMAT OF PROSECUTION REGISTER**

Sl. No.	Case investigated by	Division/ Range	File no.	Criminal complaint no.	Date of detection	Name of assessee and address	Registration no.	Nature of offence
1	2	3	4	5	6	7	8	9
Amount of tax/duty confirmed		Period of evasion	Name of accused person (s)		Date of sanction of prosecution	Date of compounding offer		Date of filing complaint
10		11	12		13	14		15
Name, address and phone no of the counsel		Date of judgement	Appeal status- date/ court in which filed		Date of hearing	Remarks/sign with name and date (Officer filing the information)		
16		17	18		19	20		

**ANNEXURE-III**

**FORMAT OF PROSECUTION REGISTER TO BE MAINTAINED BY DGCEI**

Sl.No.	Date of Receipt of O-in-O in DGCEI	Date of submission of Investigation report	Date of Receipt of Sanction Order from DG,CEI	Sanction Order No. & Date	
1	2	3	4	5x	
Date of filing of Complaint in Court		Criminal Complaint No.	File No. of Commission - - erate	Name of Commiss- - ionerate	Details of Order passed by Court
6		7	8	9	10

**1010/17/2015-CX - Monetary Limits for Arrest**

**F. No. 96/54/2014-CX.1  
Government of India  
Department of Revenue  
Central Board of Excise & Customs  
New Delhi**

New Delhi, the 23<sup>rd</sup> October, 2015

All Principal Chief/Chief Commissioners of Central Excise & Customs,  
All Principal Chief/Chief Commissioners of Central Excise,  
All Principal Chief/Chief Commissioners of Service Tax,  
All Principal Director/Directors General.

Sir/Madam,

**Sub: Revised monetary limits for arrest in Central Excise and Service Tax - reg.**

Kind attention is invited to circular number **1009/16/2015-CX dated 23.10.2015** on the subject of prosecution under the Central Excise Act, 1944 and the Finance Act, 1994 (Service Tax cases). Revised monetary limits have been prescribed in the circular for launching prosecution. Prosecution can now be launched where evasion of Central Excise duty or Service Tax or misuse of Cenvat Credit in relation to offences specified under sub-section (1) of Section 9 of the Central Excise Act, 1944 or sub-section (1) of section 89 of the Finance Act, 1994 is rupees one crore or more.

2. Consequently, it has been decided to revise the limits for arrests in Central Excise and Service tax. **Henceforth, arrest of a person in relation to offences specified under clause (a) to (d) of sub-section (1) of Section 9 of the Central Excise Act, 1944 or under clause (i) or (ii) of sub-section (1) of section 89 of the Finance Act, 1994, may be made in cases where the evasion of Central Excise duty or Service Tax or the**



**misuse of Cenvat Credit is equal to or more than rupees one crore. Central Excise circular no. 974/08/2013-CX and Service Tax circular no. 171/6 /2013-ST both dated 17-09-2013 stand amended accordingly.**

3. Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow.

Yours faithfully,

(ROHAN)

Under Secretary to the Govt. of India

**187/6/2015-ST – Refund claim**

F. No. 137/62/2015-Service Tax  
Government of India Ministry of  
Finance

Department of Revenue Central  
Board of Excise & Customs  
Service Tax  
Wing

New Delhi, dated 10<sup>th</sup> November, 2015

To

All Principal Chief Commissioners of Central Excise  
All Chief Commissioners of Central Excise/Service  
Tax Principal Directors General of Goods & Services Tax/Systems/ Central Excise Intelligence  
Director General of Audit/Tax Payer Services  
All Principal Commissioners/Commissioners of Central Excise/Service Tax  
All Commissioners of Central Excise/Service Tax (Audit)/Principal Commissioners/Commissioners LTU,  
Joint Secretary TRU-I/TRU-II/Review Commissioner Central Excise/Legal/PAC/Taxpayer Services

Madam/Sir

Subject: Speedy disbursal of pending refund claims of exporters of services under rule 5 of the CENVAT Credit Rules, 2004

The Board has been issuing instructions from time to time relating to the sanction and disbursal of refund claims under various notifications. A simplified procedure for sanction of refund for select categories of exporters was outlined vide Circular No. 828/5/2006-CX dated 20-4-2006 issued from F. No. 268/4/2005-CX-8. This year having been declared as the Year of Taxpayer Services, the Board has accorded primacy to speedy sanction of refunds in case of export of services. Keeping in mind the various legal changes in service tax since 2006 and the various representations received in this regard, I am directed to inform you that the following scheme has been drawn up to fast track sanction of refund of accumulated CENVAT credit to exporters of services. This scheme is not a substitute for the various notifications but is meant to complement them and is aimed at enabling ease of doing business.

## 2.0 Applicability of the scheme

2.1 This scheme is applicable to service tax registrants who are exporters of services, with respect to refund claims under rule 5 of the CENVAT Credit Rules, 2004, which have been filed on or before **31-3-2015**, and which have not been disposed of as on date of the issue of this circular. Such registrants will be referred to as 'claimants' in the subsequent paragraphs.

2.2 The phrase 'disposed of' in this context refers to either sanction of refund or denial, either in whole or in part, by way of an adjudication order. Refunds which had been finalized earlier by issuance of an adjudication order but have been remanded back to the original

sanctioning authority will not be covered under this scheme since re-examination of such claims will have to be done strictly in terms of the remand order of the Commissioner (Appeals)/CESTAT/High Court.

### **3.0 Additional documents to be submitted (i.e. in addition to those required to be filed along with the claim)**

3.1 A certificate from the statutory auditor in the case of companies, and from a chartered accountant in the case of assessee who are not companies, in the format given in Annexure-I.

3.2 An undertaking from the Claimant in the format given in Annexure-2.

#### **4.1 Operation of the scheme**

4.2 On receipt of the documents referred to in paragraph 3.1 and 3.2 above in respect of pending claims, the jurisdictional Deputy/Assistant Commissioner will give a dated acknowledgement to the claimant. He will then make a **provisional payment** of 80% (eighty per cent) of **the amount claimed as refund, within** five working days of the receipt of the documents.

4.3 The letter intimating the provisional payment should be in the format given in Annexure-3. It is clarified that this payment of 80% of the refund amount shall be purely provisional, based on the documents referred to in paragraphs 3.1 and 3.2 above and without prejudice to the department's right to check the correctness of the claim in terms of the relevant notification and recover any amount which has been provisionally paid. It is also clarified that the decision to grant provisional payment is an administrative order and not a quasi-judicial order and should not be subjected to review.

4.4 After making the provisional payment, the jurisdictional Deputy/Assistant Commissioner shall undertake checking the correctness of the refund claim in terms of the relevant notification.

4.5 During the course of verification, it may appear that a part of the amount claimed as refund is inadmissible. In such cases, a show cause notice (SCN) has to be issued asking the claimant to show cause why the inadmissible amount should not be denied and wherever relevant, why any amount which has been provisionally paid should not be recovered. However, prior to the issuance of such a SCN, the claimant may be intimated about the inadmissible amount so that he has an opportunity to avail of the provisions of section 73(3) of the Finance Act, 1994. A speaking, appealable order will have to be passed with respect to the SCN. This order will be reviewed by the jurisdictional Commissioner.

4.6 If during review of the refund order, any further amount is found to be inadmissible, then, apart from filing an appeal for setting aside or modifying the relevant portion of the order, a SCN will also have to be issued for the amount not covered by the original SCN. However, prior to the issue of such a SCN, the claimant may be intimated about the inadmissible amount so that he has an opportunity to avail of the provisions of section 73(3)

of the Finance Act, 1994.

## 5.0 Monitoring and reporting

5.1. An MIS report in the format specified in Annexure-4 may be sent by the

**F. No. 354/129/2015-TRU (Pt.)**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**(Tax Research Unit)**

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Dated the 16<sup>th</sup> November, 2015.

To

Principal Chief Commissioners of Customs and Central Excise(All)  
Principal Chief Commissioners of Central Excise & Service Tax (All)  
Principal Director Generals of Goods and Service Tax/System/CEI  
Director General of Audit/Tax Payer Services,  
Principal Commissioners/ Commissioners of Customs and Central Excise (All)  
Principal Commissioners/Commissioners of Central Excise and Service Tax (All)  
Principal Commissioners/Commissioners of Service Tax (All)  
Principal Commissioners/Commissioners LTU/Central excise/Service Tax (Audit)  
Madam/Sir,

**Subject:** Accounting code for payment of Swachh Bharat Cess - regarding.

Chapter VI of the Finance Act, 2015 has been brought into effect from 15<sup>th</sup> November, 2015 [notification Nos. 21/2015-ST, dated 6<sup>th</sup> November, 2015 refers]. Swachh Bharat Cess is leviable on all taxable services, other than services which are fully exempt from Service Tax or services which are otherwise not liable to Service Tax under section 66B of the Finance Act, 1994, at the rate of 0.5% [notification No.22/2015-ST, dated 6<sup>th</sup> November, 2015 refers].

2. Accordingly, accounting codes have also been allotted by the Office of the Controller General of Accounts for the new Minor Head "506-Swachh Bharat Cess" and new Sub-heads as under:

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts (Interest)	Penalties	Deduct Refunds
0044-00-506	00441493	00441494	00441496	00441495

3. All concerned are requested to acknowledge the receipt of this circular.

4. Trade Notice/ Public Notice to be issued. Wide publicity through local news media including vernacular press may be given. Hindi version shall follow.

Yours faithfully,  
(Abhishek Chandra Gupta)  
Technical Officer (TRU)

**F. No. 354/279/2015-TRU**

New Delhi, the 26<sup>th</sup> November, 2015

To

Principal Chief Commissioners of Customs and Central Excise(All)

Principal Chief Commissioners of Central Excise & Service Tax (All)

Principal Director Generals of Goods and Service Tax/System/CEI

Director General of Audit/Tax Payer Services,

Principal Commissioners/ Commissioners of Customs and Central Excise (All)

Principal Commissioners/Commissioners of Central Excise and Service Tax (All)

Principal Commissioners/Commissioners of Service Tax (All)

Principal Commissioners/Commissioners LTU/Central excise/Service Tax (Audit)

Madam/Sir,

**Sub: Clarification regarding leviability of service tax in respect of Seed Testing with effect from 01.07.2012-reg.**

It has come to the notice of the Board that certain field formations have taken a view that all activities incidental to seed testing are leviable to service tax and only the activity in so far it relates to actual testing has been exempted in the Negative List.

1. 2. The matter has been examined. In this regard, Negative list entry under Clause (d) of section 66D of the Finance Act, 1994 is reproduced as under :

“(d) **services relating to agriculture** or agricultural produce **by way of—**

(i) **agricultural operations directly related to production of any agricultural produce** including cultivation, harvesting, threshing, plant protection or **testing**; ”

2.1 Term ‘agriculture ‘ has been defined under section 65B clause (3) as under:-

(3) “ agriculture” means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;

2.2 Term ‘ agriculture produce ‘ has been defined under section 65B clause (5) as under:-

(5) “ agricultural produce” means any produce of agriculture on which either no further 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;

2.3 There is no doubt that seed is not covered under the definition of agriculture produce. **All services relating to agriculture by way of agriculture operations directly relating to production of agriculture produce including testing** is covered. Testing and certification can be done as per the Act and rules made there under in this regard. **Testing cannot stand in isolation of certification and other ancillary activities.** Testing cannot be random, somebody has to register for testing. **If certificate is not received and seeds are not tagged, testing is irrelevant. Therefore, all processes are a part of the composite process and cannot be separated from testing.**

2.4 "Agricultural operations" have not been defined in the Chapter V of the Finance Act, 1994 and an inclusive and indicative list of such operations has been given. Thus it has been defined as "Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing". The exemption is thus not limited to the specified operations. The word **'seed' from testing in agricultural operations was deleted so as to broaden the scope of coverage of the negative list entry and to cover any testing in agricultural operations in negative list, which are directly linked to production of agriculture produce and not to limit its scope only to seeds.**

3.0 It may be recalled that prior to introduction of Negative List, the services [*technical testing and analysis and technical inspection and certification of seeds*], rendered by notified Central/ State Seed Testing Laboratories /Agency were exempt from Service Tax [*notification No.10/2010-Service Tax*]. This notification was rescinded by another notification [*No.34/3012-Service Tax, dated 20-06-2012*], w.e.f. 01-07-2012, when the Negative List entry came into force. The intent of rescinding the said notification was not to withdraw the above stated exemption but the said exemption was being subsumed elsewhere. The relevant entry in the Negative list as on 01.07.2012 read as under:-

(d) **services relating to agriculture** or agricultural produce by way of—  
(i) **agricultural operations directly related to production** of any agricultural produce including cultivation, harvesting, threshing, plant protection or **seed testing**;

3.1 Further, in the subsequent Budget 2013-14, the word "seed" prefixed to "seed testing" was omitted w.e.f. 10.05.2013. The intent was clarified by the Joint Secretary (Tax Research Unit) vide Budget D.O.F. No. 334/3/2013-TRU, New Delhi, dated February 28, 2012, in para 1 (iii) of the letter that the **negative list entry in sub-clause (i) of clause (d) of section 66D is being modified by deleting the word "seed". This will allow the benefit to all other testing in relation to "agriculture" or "agricultural produce".**

4. In view of the above, it is clarified that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of 'testing' as mentioned in sub-clause (i) of clause (d) of section 66D of the Finance Act, 1994. Therefore, such services are not liable to Service Tax under section 66B of the Finance Act, 1994.

5. All concerned are requested to acknowledge the receipt of this circular.

6. Trade Notice/ Public Notice to be issued. Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow.

Yours faithfully,

(Ravindra Kumar)  
Technical Officer (TRU)

**190/9/2015-Service Tax – Service Tax Applicability on Input Services – Export of Garments**

**F.No.354/153/2014-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
(Tax Research Unit)**

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**Dated- 15<sup>th</sup> December, 2015**

To,

Principal Chief Commissioners of Customs and Central Excise(All)  
Principal Chief Commissioners of Central Excise & Service Tax (All)  
Principal Director Generals of Goods and Service Tax/System/CEI  
Director General of Audit/Tax Payer Services,  
Principal Commissioners/ Commissioners of Customs and Central Excise (All)  
Principal Commissioners/Commissioners of Central Excise and Service Tax (All)  
Principal Commissioners/Commissioners of Service Tax (All)  
Principal Commissioners/Commissioners LTU/Central excise/Service Tax (Audit)

**Sub:- Applicability of service tax on the services received by apparel exporters in relation to fabrication of garments - reg.**

Madam/Sir,

It has come to the notice of the Board that certain field formations are taking a view that service tax is payable on services received by the apparel exporters from third party for job work. Apparently field formations are taking a view that the services received by apparel exporters is of manpower supply, which neither falls under the negative list nor is specifically exempt. However, trade is of the view that the services received by them is of job work involving a process amounting to manufacture or production of goods, and thus would fall under negative list [section 66D (f)] and hence would not attract service tax.

2. The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The **essential characteristics of manpower supply service** are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.



2.1 On the other hand, the **essential characteristics of job work** service are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of quantum of job work undertaken, i.e. number of pieces fabricated etc. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service receiver.

3. Therefore, the exact nature of service needs to be determined on the facts of each case which would vary from case to case. The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided. A typical agreement that has been forwarded by the Apparel Export Promotion Council in respect of outsourced services contains following terms and condition,-

- a. The contractor (service provider) is engaged for undertaking specific jobs.
- b. The contractor is at liberty to decide the number of workers which are required for undertaking the jobs.
- c. The job worker may undertake job in his premises or in the premises of service receiver;
- d. Value of service is payable on per piece basis, depending upon item and style;
- e. Service provider is liable to compensate the service recipient if the work is not as per the standard norm;
- f. In case the work is executed by service provider at the site of service recipient, the service provider would indemnify the service receiver of any loss to inputs and infrastructure.
- g. The employee deployed for the assigned job would be under the control/supervision of the service provider.
- h. Payment would be at agreed piece rate basis.

Plain reading of this agreement makes it an agreement of job work applying the criterion outline in para 2 above.

4. However, every job work is not covered under the negative list. If the job work involves a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944, it would be covered under negative list in terms of Section 66D(f) read with section 65B (40) of the Finance Act, 1994.

5. The issue of applicability of service tax may accordingly be decided taking into account the nature of agreement/contract and the service being provided.

6. All concerned are requested to acknowledge the receipt of this circular.

7. Trade Notice/ Public Notice to be issued. Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow.

Yours faithfully,

(Dr. Abhishek Chandra Gupta)  
Technical Officer (TRU)

## 15. POTR CIRCULARS

### 341/34/2010-TRU - POTR Clarifications

#### **Point of Taxation Rules, 2011 and other provisions – Clarification on amendments**

#### **Instruction No. 341/34/2010-TRU, dated 31-3-2011**

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

*Subject : Amendments in Point of Taxation Rules, 2011 and other related provisions.*

As you are aware, the *Point of Taxation Rules* (PTR) were formulated vide Notification No. 18/2011-S.T., dated 1-3-2011. Based on the feedback, certain amendments are being carried out in these rules vide Notification No. 25/2011-S.T., dated 31-3-2011.

The highlights of the changes are discussed in the following paragraphs.

2. While the rules shall come into force from 1-4-2011, an option has been given in rule 9 to pay tax on payment basis, as at present, till 30-6-2011.
3. Rule 3 has been amended to provide that the point of taxation shall be as follows :
  - (a) Date of invoice or payment, whichever is earlier, if the invoice is issued within the prescribed period of 14 days from the date of completion of the provision of service.
  - (b) Date of completion of the provision of service or payment, if the invoice is not issued within the prescribed period as above.

The applicability of the rule will be clear from the illustrations in the following table :

<b>S. No.</b>	<b>Date of completion of service</b>	<b>Date of invoice</b>	<b>Date on which payment recd.</b>	<b>Point of Taxation</b>	<b>Remarks</b>
1.	April 10, 2011	April 20, 2011	April 30, 2011	April 20, 2011	Invoice issued in 14 days and before receipt of payment
2.	April 10, 2011	April 26, 2011	April 30, 2011	April 10, 2011	Invoice not issued within 14 days and payment received after completion of service

<b>S. No.</b>	<b>Date of completion of service</b>	<b>Date of invoice</b>	<b>Date on which payment recd.</b>	<b>Point of Taxation</b>	<b>Remarks</b>
3.	April 10, 2011	April 20, 2011	April 15, 2011	April 15, 2011	Invoice issued in 14 days but payment received before invoice
4.	April 10, 2011	April 26, 2011	April 5, 2011 (part) and April 25, 2011 (remaining)	April 5, 2011 and April 10, 2011 for respective amounts	Invoice not issued in 14 days. Part payment before completion, remaining later

4. Rule 4 has been amended to clarify that change in the effective rate of tax shall also include change in that portion of value on which tax is payable in terms of an exemption notification or rules made in this regard. It may be noted that an exemption has been granted in value for various services vide Notification No. 1/2006-S.T., dated 1-3-2006 which has the effect of payment of tax only on a part of the value. Similarly either the values or the rates at which tax is payable are provided under rule 6 (7, 7A, 7B or 7C) of the Service Tax Rules, 1994 as well as the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Thus, whenever these values or the composition rates are changed, it would have the same effect as the change in the rate of duty. It is hereby further clarified that the rate of tax shall also include any other notification which is issued, rescinded or amended and has the effect of altering the taxability of any service.

5. Rule 6 relating to continuous supply of service has been aligned with the revised rule 3 and the date of completion of continuous service has been defined within the rule. This date shall be the date of completion of the specified event stated in the contract which obligates payment in part or whole for the contract. For example, in the case of construction services if the payments are linked to stage-by-stage completion of construction, the provision of service shall be deemed to be completed in part when each such stage of construction is completed. Moreover, it has been provided that this rule will have primacy over rules 3, 4 and 8.

6. Moreover, the following services have been notified as "continuous supply of services" in terms of clause 2(c) of the rules vide notification No. 28/2011-S.T., dated 1-4-2011 :

- (a) Telecommunication service [65(105)(zzzx)]
- (b) Commercial or industrial construction [65(105)(zzq)]
- (c) Construction of residential complex [65(105)(zzzh)]
- (d) Internet Telecommunication Service [65(105)(zzzu)]
- (e) Works contract service [65(105)(zzzza)]

Thus these services will constitute "continuous supply of services" irrespective of the period for which they are provided or

agreed to be provided. Other services will be considered continuous supply only if they are provided or agreed to be provided continuously for a period exceeding three months.

7. Rule 7 relating to associated enterprises has been deleted. Now that the date of completion of the provision of service is an important criterion in the determination of point of taxation, it shall take care of most of the dealings between the associated enterprises. Thus in case of failure to issue the invoice within the prescribed period, the date of completion of provision of service shall come into effect even if payment is not made.

8. Rule 7 has thus been replaced by a new provision whereby the point of taxation shall be the date of making or receiving the payment, as the case may be. This provision shall apply to the following :

- (i) Export of services;
- (ii) Persons, where the obligation to pay tax is on the service recipient in terms of rule 2(1)(d) of the Service Tax Rules, 1994 in respect of services notified under section 68(2) of the Finance Act, 1994.
- (iii) Individuals, proprietorships and partnership firms providing specified services (Chartered Accountant, Cost Accountant, Company Secretary, Architect, Interior Decorator, Legal, Scientific and Technical consultancy services). The benefit shall not be available in case of any other service also supplied by the person concerned along with the specified services.

9. Export of services is exempt subject, *inter alia*, to the condition that the payment should be received in convertible foreign exchange. Until the payment is received, the provision of service, even if all other conditions are met, would not constitute export. In order to remove the hardship that will be caused due to accrual method, the point of taxation has been changed to the date of payment. However, if the payment is not received within the period prescribed by RBI, the point of taxation shall be determined in the absence of this rule.

10. In the case of services where the recipient is obligated to pay service tax under rule 2(1)(d) of Service Tax Rules i.e. on reverse charge basis, the point of taxation shall be the date of making the payment. However, if the payment is not made within six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist. Moreover, in the case of associated enterprises, when the service provider is outside India, the point of taxation will be the earlier of the date of credit in the books of account of the service receiver or the date of making the payment.

11. Changes have also been made in the Service Tax Rules, 1994 vide Notification No. 26/2011-S.T., dated 31-3-2011 and have a close relationship with the *Point of Taxation Rules* as follows :

- (i) The obligation to issue invoice shall be within 14 days of completion of service and not provision of service.
- (ii) If the amount of invoice is renegotiated due to deficient provision or in any other way changed in terms of conditions of the contract (e.g. contingent on the happening or non-happening of a future event), the tax will be payable on the revised amount provided the excess amount is either refunded or a suitable credit note is issued to the service

receiver. However, concession is not available for bad debts.

12. The credit of input services under rule 4(7) of the Cenvat Credit Rules has also been liberalized vide notification No. 13/2011-C.E. (N.T.), dated 31-3-2011 and the same shall be available on receipt of invoice (except in cases of reverse charge) as long as the payment is made within three months. Even specified persons required to pay tax on cash basis will be able to avail credit on receipt of invoice. Suitable changes have also been made for reversal of credit or payment when the value of service is renegotiated or altered for any reason by refund or issue of a credit note by the service provider. Amendment has also been made in Rule 9 of Cenvat Credit Rules, 2004 by allowing credit on supplementary invoice, except in *non-bona fide* cases, which may become necessary in certain situations e.g. where the point of tax is the date of payment while the invoice had already been issued e.g. rule 4(b)(i) of Point of Taxation Rules.

13. It is further clarified that the transitional provisions will apply to all invoices issued before 31-3-2011 in so far as taxpayers who switch over to the new rules on 1-4-2011. Those assesseees who like to shift to the new rules on 1-7-2011 would have similar protection in respect of invoices issued before the date they switch over to the new rules. The benefit has also been extended to services when provision has been completed before 1-4-2011 or 1-7-2011, as the case may be. It is also clarified that the payments received before the new rules come into force do not require any transitional provisions as they are already required to pay tax on payment basis.

**<sup>1</sup>154/5/2012-ST – POTR clarification**

**Point of Taxation Rules – Clarifications**

**Circular No. 154/5/2012-S.T., dated 28-3-2012**

**F.No. 334/1/2012-TRU**

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

*Subject : Clarification on Point of Taxation Rules -  
Regarding.*

1. Notification No. 4/2012-Service Tax dated the 17th March 2012 has amended the **Point of Taxation Rules**, 2011 w.e.f. 1st April 2012, *inter-alia*, amending Rule 7 which applied to individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (g), (p), (q), (s), (t), (u), (za) and (zzzzm) of clause (105) of section 65 of the Finance Act, 1994. Rule 7 determined the point of taxation in such cases as the date of receipt of payment. The provisions have been amended both in the Point of Taxation Rules, 2011 and the Service Tax Rules 1994 such that from 1st April 2012 the payment of tax shall be allowed to be deferred till the receipt of payment upto a value of Rs 50 lakhs of taxable services. The facility has been granted to all individuals and partnership firms, irrespective of the description of service, whose turnover of taxable services is fifty lakh rupees or less in the previous financial year.

2. Representations have been received, in respect of the specified eight services, requesting clarification on determination of point of taxation in respect of invoices issued on or before 31st March 2012 where the payment has not been received before 1st April 2012.

3. The issue has been examined. For invoices issued on or before 31st March 2012, the point of taxation shall continue to be governed by the Rule 7 as it stands till the said date. Thus in respect of invoices issued on or before 31st March 2012 the point of taxation shall be the date of payment.

4. Trade Notice/Public Notice may be issued to the field formations accordingly.

5. Please acknowledge the receipt of this circular. Hindi version to follow.

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<sup>1</sup> Applicability of the Circular stayed in the case of Delhi Chartered Accountants Society (Regd.) [2013-TIOL-81-HC-DEL-ST] [Authors Comments - It is well-settled that a Circular which is contrary to the Act and the Rules cannot be enforced – Refer *Commissioner of Central Excise, Bolpur vs Ratan Melting & Wire Industries 2008(13)SCC(1)*]

## 155/6/2012-ST – POTR Clarifications

### Point of Taxation Rules – Clarification

Circular No. 155/6/2012-S.T., dated 9-4-2012

F.No. 334/1/2012-TRU

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

*Subject : Clarification on Point of Taxation Rules - Regarding.*

1. Notification No. 2/2012-Service Tax dated the 17th March 2012 has rescinded Notification No. 8/2009-Service Tax, dated the 24th February, 2009, thus restoring the effective rate of service tax to 12% w.e.f. 1st April 2012. Further the Notification No. 26/2010-Service Tax, dated the 22nd June, 2010 has been superseded by Notification No. 6/2012-Service Tax dated the 17th March, 2012, w.e.f. 1st April 2012.

2. It has been brought to the attention of the Board that some airlines are collecting differential service tax on tickets issued before 1st April 2012 for journey after 1st April 2012, causing inconvenience to passengers. Representations have also been received in this regard. The position of law in the above respect is clear and is detailed below.

3. Rule 4 of the *Point of Taxation Rules, 2011* deals with the situations of change in effective rate of tax. In case of airline industry, the ticket so issued in any form is recognised as an invoice by virtue of proviso to Rule 4A of Service Tax Rules, 1994. Usually in case of online ticketing and counter sales by the airlines, the payment for the ticket is received before the issuance of the ticket. Rule 4(b)(ii) of the *Point of Taxation Rules, 2011* addresses such situations and accordingly the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier. Thus the service tax shall be charged @ 10% subject to applicable exemptions plus cesses in case of tickets issued before 1st April, 2012 when the payment is received before 1st April, 2012.

4. In case of sales through agents (IATA or otherwise including online sales and sales through GSA) the payment is received by the agent and remitted to airlines after some time. When the relationship between the airlines and such agents is that of principal and agent in terms of the Indian Contract Act, 1872, the payment to the agent is considered as payment to the principal. Accordingly as per Rule 4(b)(ii), the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier. Thus the service tax shall be charged @ 10% subject to applicable exemptions plus cesses in case of tickets issued before 1st April 2012 when the payment is received before 1st April 2012 by the agent.

5. However, to the extent airlines have already collected extra amount as service tax and do not refund the same to the customers, such amount will be required to be paid to the credit of the Central Government under Section 73A of the Finance Act, 1994 (as amended).



6. Trade Notice/Public Notice may be issued to the field formations accordingly.

**<sup>1</sup>158/9/2012-ST – Change in Rate**

**Change in rate of Service tax from 1-4-2012 – Rate of Service tax when invoice issued prior to 1-4-2012 but payment received thereafter in relation to 8 specified services**

**Circular No. Circular No. 158/9/2012-S.T., dated 8-5-2012**

**F.No. 354/69/2012-TRU**

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

*Subject : Clarification on Rate of Tax - regarding.*

1. The rate of service tax has been restored to 12% w.e.f. 1st April 2012. Representations have been received requesting clarification on the rate of tax applicable wherein invoices were raised before 1st April 2012 and the payments shall be after 1st April 2012. Clarification has been requested in case of the 8 specified services provided by individuals or proprietary firms or partnership firms, to which Rule 7 of Point of Taxation Rules, 2011 was applicable and services on which tax is paid under reverse charge.

2. The rate of service tax prevalent on the date when the point of taxation occurs is rate of service tax applicable on any taxable service. In case of the 8 specified services and services wherein tax is required to be paid on reverse charge by the service receiver the point of taxation is the date of payment. Circular No. 154/5/2012-S.T., dated 28th March 2012 [2012 (26) S.T.R. C109] has also clarified the same. Thus in case of such 8 specified 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 the service receiver, if the payment is received or made, as the case maybe, on or after 1st April 2012, the service tax needs to be paid @ 12%.

3. The invoices issued before 1st April 2012 may reflect the previous rate of tax (10% and cess). In case of need, supplementary invoices may be issued to reflect the new rate of tax (12% and cess) and recover the differential amount. In case of reverse charge the service receiver pays the tax and takes the credit on the basis of the tax payment challan. Cenvat credit can be availed on such supplementary invoices and tax payment challans, subject to other restrictions and conditions as provided in the Cenvat Credit Rules, 2004.

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<sup>1</sup> Applicability of the Circular stayed in the case of Delhi Chartered Accountants Society (Regd.) [2013-TIOL-81-HC-DEL-ST] [Authors Comments - It is well-settled that a Circular which is contrary to the Act and the Rules cannot be enforced – Refer *Commissioner of Central Excise, Bolpur vs Ratan Melting & Wire Industries 2008 (13) SCC (1)*]

4. Trade Notice/Public Notice may be issued to the field formations accordingly.

5. Please acknowledge the receipt of this circular. Hindi version to follow.

**162/13/2012 - Clarification on POTR**

**Circular No. 162/13 /2012 –ST**

F. No. 354/111/2012-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
(Tax Research Unit)

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Room No 146, North Block, New Delhi-1,  
Dated the 6<sup>th</sup> July 2012.

To

Chief Commissioner of Customs and Central Excise  
(All)  
Chief Commissioner of Central Excise & Service Tax  
(All)  
Director General of Service Tax  
Director General of Central Excise Intelligence  
Director General of Audit  
Commissioner of Customs and Central Excise (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)

Madam/Sir,

**Subject: Clarification on Point of Taxation  
Rules - regarding.**

Consequent to the changes introduced at the time of Budget 2012 in the Point of Taxation Rules, 2011, together with revision of the service tax rate from 10% to 12% and the subsequent changes that have been made effective from 01.07.2012, the following clarifications have been desired:

- (a) Point of taxation and the rate applicable in respect of continuous supply of services at the time of change in rates effective from 01.04.2012;
- (b) Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007; and
- (c) Applicability of partial reverse charge provisions in respect of specified services.

2.1 The issues have been examined. The continuous supply of services was governed by

rule 6 until 31.03.2012. The rule started with the wordings "notwithstanding anything contained in rules 3, 4 ..." Therefore, the point of taxation in respect of services provided in terms of the said rule on or before 31.03.2012 would remain unaffected by rule 4.

- 2.2 To clarify the matter further, if the invoice had been issued or payment received in respect of such services on or before 31.03.2012, the point of taxation would stand determined under rule 6 accordingly and shall not alter due to the subsequent changes in the Point of Taxation Rules, 2011 that became effective only from 1.4.2012.
- 3.1 However the position has undergone a change at the time of transition towards the Negative List and the introduction of other accompanying changes in Service Tax (Determination of Value) Rules, 2006 and partial reverse charge. At the said time rule 6 stood omitted and the point of taxation was required to be determined ordinarily in such cases under the main rule i.e. rule 3. This rule is, however, overridden by rule 4 when there is a change in effective rate of tax. The "*change in effective rate of tax*" has been defined in clause (ba) of rule 2 to include a change in the portion of value on which tax is payable.
- 3.2 To illustrate, the following would be changes in effective rate of tax:-
  - (i) the change in the portion of total value liable to tax in respect of works contract other than original works (from @ 4.8% earlier to @ 12% on 60% of the total amount charged, or effectively @ 7.2% now).
  - (ii) exemption granted to certain works contracts w.e.f. 1<sup>st</sup> July 2012 which were earlier taxable.
  - (iii) taxability of certain works contracts which were hitherto exempted.
  - (iv) change in the manner of payment of tax from composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

- 3.3 However, the following will not be a change in effective rate of tax:-
- (i) works contracts earlier paying service tax @ 4.8% under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 and now required to pay service tax @12% on 40% of the total amount charged, keeping the effective rate again at 4.8% (as only the manner of expression has been altered).
  - (ii) works contracts which were outside the scope of taxation (and not merely exempted) but have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. (Rule 5 of the Point of Taxation Rules, 2011 shall apply to such services.)
- 3.4 Thus the point of taxation for services provided in respect of taxable works contracts in progress on 01.07.2012 would need to be determined under rule 4 of the Point of Taxation Rules unless there is no change in effective rate of tax.
4. It is further clarified that the provisions of partial reverse charge would also be applicable in respect of such services where point of taxation is on or after 01.07.2012 under the applicable rule in respect of the service provider.
5. This Circular may be communicated to the field formations and service tax assesseees, through Public Notice/ Trade Notice. Hindi version to follow.

Yours faithfully,

(Dr. Shobhit Jain)  
O.S.D. (TRU)  
Fax: 23093037

## 16. DRAFT CIRCULAR

### DRAFT CIRCULAR ON STAFF BENEFITS<sup>1</sup>

F.No 354/127/2012-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit

146 North Block, New Delhi  
Dated 27<sup>th</sup> July 2012

**Subject: - Draft Circular on leviability of service tax on staff benefits and employment related transactions- reg**

Subsequent to the operationlisation of the Negative List, a number of issues have been raised in relation to the manpower supply or the services provided by the directors of a company or by the employer to the employees. These issues have been examined and are proposed to be clarified as follows:

#### **B. Scope of manpower supply**

2. After the operationlisation of the Negative List, the erstwhile definition of the manpower recruitment or supply agency is no more applicable. Thus, the words manpower supply would have to be given their natural meaning. The manpower supply is understood to mean when one person provides another person with the use of one or more individuals who are contractually employed or otherwise engaged by the first person.


*This is a draft  
circular*

<sup>1</sup> Now, this Draft Circular is not available on the CBEC website <http://www.cbec.gov.in/draft-circ/draft-circular.htm>


The essence of the employment should be that the individuals should be employed by the provider of the service and not by the recipient of the service.

3. There could be certain contracts in which such manpower is made available to execute another independent contract by the service provider. For example, a person may agree to carry out construction or a manufacture for another in which certain manpower may be engaged. As long as such manpower is not placed operationally under the superintendence or control of the recipient, it shall not be a case of manpower supply, though it will continue to be judged independently whether it comprises any other taxable service.

4. There are also cases of secondment whereby certain staff belonging to an organization is placed at the disposal of a subsidiary company or any other associate company. Such cases will be covered by the definition of manpower supply as the contractual employment continues to be with the parvent company.



*This is a draft  
circular*



## **B. Joint Employment**

5. There can also be cases where staff is employed by one or more employers who normally share the cost of such employment. The services provided by such employee will be covered by the exclusion provided in the definition of service. However, if the staff has been engaged by one employer and only made available to

other for a consideration, it shall not be a case of joint employment.

6. Another arrangement could be where one entity pays the salary and other expenses of the staff on behalf of other joint employers which are later recouped from the other employers on an agreed basis on actuals. Such recoveries will not be liable to service tax as it is merely a case of cost reimbursement.

### **C. Directors**

7. Services of a director on the board of a company have now become taxable. A director may be appointed either in an individual capacity or to represent an entity (including government) who has either invested in the company or is otherwise authorized to nominate a director. When a director receives payment in his personal capacity, the same is liable to be taxed in the hands of the director. However, where the fee is charged by the entity appointing the director and is paid to such entity, the services shall be deemed to be supplied by such an entity and not by the individual director. Thus in the case of Govt. nominees, the services shall be deemed to be provided by the Govt. and liable to be taxed under the exclusion sub- (iv) of clause (a) of section 66D of the Finance Act, 1994 i.e. support services by Government to business. Such services are liable to be taxed on reverse charge basis.

*This is a draft circular*

### **D. Treatment of supplies made by the employer to employees**



8. A number of activities are carried out by the employers for the employees for a consideration. Such activities fall within the definition of "service" and are liable to be taxed unless specified in the Negative List or otherwise exempted.
9. One of the ingredients for the taxation is that such activity should be provided for consideration. Where the employees pays for such services or where the amount is deducted from the salary, there does not seem to be any doubt. However, in certain situations, such services may be provided against a portion of the salary foregone by the employee. Such activities will also be considered as having been made for a consideration and thus liable to tax. Cenvat credit for inputs and input services used to provide such services will be eligible under extant rules. The said goods or services would now not be construed to be for personal use or consumption of an employee per se and rather shall be a constituent to the taxable service provided to an employee. The status of the employee would be as a service recipient rather than as a mere employee when consuming such output service. The valuation of the service so provided by the employer to the employee shall be determined as per the extant rules in this regard.
10. However, any activity available to all the employees free of charge without any reduction from the emoluments shall not be considered as an activity for consideration and will thus remain outside the purview

*This is a draft  
circular*

of the service tax liability (facilities like crèche, gymnasium or a health club which all employees may use without any charge or reduction from the salary will be outside the tax net). However the Cenvat credit for such inputs and input services will be guided by the extant rules.

11. Moreover, it would need to be seen whether the services provided by the employer are otherwise covered by the Negative List or exempt. For example, the services of food and catering provided by the employer in a canteen would normally fall outside the tax net unless such canteen has both the facility of air-conditioning as well as license to serve liquor (S. No. 19 of the Mega exemption). Likewise, services provided by way of guest house will also not be liable to tax if the tariff for such unit of accommodation is below Rs.1000 per day or equivalent (S. No. 18 of the Mega exemption). Similarly, services of telephone and motorcar for personal use will be covered by the service tax.

**E. Treatment of reimbursements made by the employer to the employee.**

12. Provision of service by an employee to the employer in the course of or in relation to his employment is excluded from the definition of the "service". Thus reimbursements of expenditure incurred on behalf of the employer in course of employment would not amount to a "service" per se and hence are non-taxable.

**F. Treatment of supplies and reimbursements made by the employer to ex-employees/ pensioners.**

13. The supplies made by the employer to the ex-employees or pensioners will be of same status as those to an employee and thus would accordingly attract taxability as per discussion in D above.

The reimbursements to pensioners will also be treated at par with those of current employees when such reimbursements arise out of the initial employment contract or are in relation to that employment.

*This is a draft  
circular*

14. Chambers, trade, industry and field formations are requested to go through the draft Circular and offer their comments, views and suggestions. It is requested that comments, views and suggestions on the same may be forwarded to the undersigned on or before 24<sup>th</sup> August 2012. The same may also be emailed to [shobhit.jain@nic.in](mailto:shobhit.jain@nic.in)

(Dr Shobhit Jain)

OSD TRU

## **DRAFT CIRCULAR ON SERVICE TAX ON AIR TRANSPORT**

### **Draft Circular**

F. No.354 /146/2012 - TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)  
146-F, North Block,  
New Delhi, 27<sup>th</sup> September, 2012

To  
Chief Commissioner of Customs and Central Excise /  
Central Excise & Service Tax (All)  
Director General of Service Tax /Central Excise  
Intelligence /Audit; Commissioner of Customs and  
Central Excise/ Central Excise and Service Tax/  
Service Tax (All)

Madam/Sir,

**Subject: Draft circular -- service tax --  
transport of passengers by air -- regarding.**

Representation has been received seeking clarification regarding certain doubts which arise during the course of levy and collection of service tax on transport of passengers by air.

2. The issues have been examined and the guidance is as follows:

Issue (a) : Whether service tax of 4.944% (60% abatement) will apply to related charges such as reconfirmation fee, upgrade fee, date change, additional collection, etc., levied by airlines to passengers?


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circular*

Clarification: These charges could be levied in either of the following manners: (a) as a consolidated charge without any break-up; (b) with break-up for individual services or at a point later to the initial booking. In case of (a) above the provisions of section 66F will apply and the service that imports the essential character will determine the applicability of both the Place of Provision of Services (POP) Rules as well as abatement. In the case of (b) above, the individual components will need to be analyzed on their respective merits.

Various charges collected by airlines from a passenger can be broadly put into two categories: (a) charges which are directly related to the journey; and (b) charges which are not so related. Charges which are directly related will be covered by abatement. Re-confirmation fees, date-change fee, upgrade fee, preferred seat charges, additional collection in the nature of differential ticket fare towards the journey and unaccompanied minor charges are directly related charges. For the charges which are not directly related to the particular journey, abatement is not available. Sky-meal-on-order and escort charges are not directly related to the journey.

Issue (b): Whether abatement meant for transport of passenger by air service, is applicable for excess baggage charges?

Where a passenger embarks on an international journey, excess baggage charges are not leviable to service tax as the place of provision of such service will be outside India under Rule 10 of POP Rules. However, in the case of journey within the taxable territory, excess baggage charge is leviable to service tax without abatement. Similar will be the tax treatment for pet charges.



*This is a draft  
circular*

Issue (c ): When a passenger puts a ticket for refund, whether full rate of 12% will apply to cancellation fee, refund fee, no show fee, since the passenger is not availing air transportation service?

Clarification : In terms of section 66B of the Finance Act, 1994, service tax is leviable on service provided or agreed to be provided. Thus service tax becomes payable when a booking is made, i.e. when the service is agreed to be provided, the subsequent cancellation of the ticket does not take it outside the purview of tax absolutely.

However, Rule 6(3) of the Service tax Rules, 1994, provides that 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, the assessee may take 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 had been issued.

Thus the amount retained by the airlines in the event of cancellation of ticket, out of the original fare will remain liable to be taxed as originally taxed and hence is entitled to abatement applicable in this regard. However, if the ticketed amount is fully refunded to the passenger, but no-show (late cancellation charges) or cancellation fee is separately collected through an invoice or bill, abatement will not be applicable. Here, cancellation fee takes the nature of administrative charge.

Issue (d ): (i) whether service tax will apply on related fees/charges on journeys starting outside India, even if the transaction for related charges is made in India? ; (ii) Whether service tax will apply on related fee charges on journeys starting in India, even if the transaction for related charges is made outside India?

Clarification: According to Rule 11 of Place of Provision of Services Rules, 2012, the place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey. Therefore, if place of embarkation of passenger is located within the taxable territory, service tax is leviable on the gross amount payable for such continuous journey, irrespective of where the ticket is booked and where fees/charges are collected. If the place of embarkation of a passenger on a continuous journey falls outside the taxable territory, service tax is not leviable, irrespective of where the tickets are booked and where fees/charges are collected. However, as mentioned at (a) above, only such charge will be determined under Rule 11 of POP as are directly related to the continuous journey. The POP of other charges will be judged on their own merits.

*This is a draft  
circular*

3. Field formations, business and industry chambers are requested to offer their comments, views and suggestions on the draft circular. It is requested that comments, views and suggestions may be forwarded to the undersigned on or before 15<sup>th</sup> October, 2012. The same also may be e-mailed to [jm.kennedy@nic.in](mailto:jm.kennedy@nic.in)

(J.M.Kennedy)

Director, TRU  
Tel/Fax: 011-23092634

## 17. INSTRUCTIONS/ ORDERS

### INSTRUCTIONS – NEGATIVE LIST OF SERVICE TAX REGIME

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
CENTRAL BOARD OF EXCISE & CUSTOMS  
(TAX RESEARCH UNIT)

\*\*\*\*\*

V.K. Garg  
Joint Secretary (TRU-II)  
Tel: 23093027; Fax: 23093037  
Email: garg.vk@nic.in

**D.O.F.No.334/1/2012-TRU** New Delhi dated the 29<sup>th</sup> June,  
2012.

Dear Madam/Sir,

You will be already aware that the Negative List, together with many other accompanying changes, comes into operation from July 1, 2012.

2. The necessary notifications from 25/2012-ST to 40/2012-ST and Notification No. 28/2012-CX (NT) were issued on June 20, 2012 and have comprehensive changes relating to exemptions, Place of Provision Rules, 2012, changes to Service Tax Rules, 1994, Cenvat Credit Rules, 2004 and details of all the notifications that are being rescinded.
3. Notification No 52/2011-ST dated 30.12.2011 relating to refunds on specified services has also been revised in accordance with the new regime and the new notification No.41/2012-ST dated 29.06.2012 has been issued under the revised section 93A. Services of commission agents to exporters on the existing lines have also been validated by the issue of Notification No.42/2012-ST dated 29.06.2012.
4. There has been some doubt regarding the applicability of provisions of the Finance Act, 2004 relating to education cess and the Finance Act, 2007 relating to secondary and higher education cess as the concerned acts make reference to section 66 of the Finance Act, 1994, which shall cease to have effect from July 1, 2012. In this connection, as also in general, you may kindly refer to the sub-section (1) of section 8 of the General Clauses Act, 1897 which reads as under:  
"Where this Act, or any Central Act or Regulation made after reference to the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former



enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provisions so re-enacted.”

Thus any reference to section 66 of the Finance Act, 1994 shall be construed as reference to the newly re-enacted provision i.e. section 66B of the same Act. Despite the stated position of law, the matter has been settled by the issue of Removal of Difficulties Order No. 2/2012 dated 29.06.2012.

5. It may be noted that Notification No. 11/2005-ST dated 19.04.2005 has not been rescinded to enable sanction of pending rebates. It shall, however, automatically cease to have effect for exports on or after July 1, 2012 as the Export of Services Rules, 2005 will stand superseded from the said date.
6. You may kindly go through all the changes and let me know at the earliest if anything is required in any manner for the smooth implementation of the new provisions.
7. The successful implementation of this reform requires an involved approach at all levels, in particular in the initial months. It is necessary that these changes are well understood by the tax payers as well as our staff. To this end CBEC has released an elaborate Educational Guide (with further improvisation over the draft Guidance Papers that were released at the time of budget) and adequate copies of the same should be available to you already or shortly. You may also like to download the same from CBEC website (from the dropdown menu under the title service tax).
8. It is clarified that any Board circular that is contrary to the revised law will stand automatically superseded. In case you have any doubt about any specific circular the same may be referred to the Board.
9. CBEC has already held five seminars during this month at Delhi, Chennai, Kolkata, Ahmedabad and Hyderabad for both the trade and some of the officers in and around these places. Seminar at Mumbai is scheduled on July 13, 2012.
10. It will be desirable if similar events are held locally, supplemented also by training of our officers who have to implement the new provisions. If you need, some of the TRU officers could also assist subject a little bit to the exigencies of work here. Those who desire may source a copy of the power point presentation from TRU (by sending a request at garg.vk@nic.in).
11. Despite a very elaborate consultative process starting from August, 2011, when the first concept paper was released, it is

likely that the actual implementation of negative list will throw some issues that appear a little complex. You may like to discuss them appropriately within your own set up and in appropriate cases refer them to the Board for suitable examination. Any precipitated action will be ill-advised at the early stages of implementation unless the revenue is at immediate stakes.

12. A list of services that are likely to come into the tax net in your charge may be drawn and communicated to me. This would help us to share the same with other formations as also provide information from other formations to you so that a coordinated approach is followed until the system gets streamlined.
13. In general any case resulting in taxation of an activity that is not liable to tax under the present regime should at least receive the attention of the Commissioner in charge before it is taken up for any further action.
14. Of equal importance is to devote attention to activities that are presently liable to tax and may cease to be taxed in future. Some of these have been clearly exempted. There could be others where, either due to a particular interpretation or due to applicability of Place of Provision Rules, 2012 or in some other manner, an interpretation may be taken that the same are no more liable to tax. Such cases may be immediately identified and in case of doubt referred to the Board.
15. The allotment of accounting heads is being communicated by a separate communication.
- 16. A spirit of Helpfulness, Understanding and Guidance (HUG for short) should guide us in balancing our task keeping in perspective the enormity of changes that are being implemented shortly.**

With regards,  
Yours sincerely,  
(V.K. Garg)

### **FILING OF ST-3**

**F. No. 137/22/2012-Service Tax**  
Government of India  
Ministry of Finance  
Department of Revenue

Central Board of Excise & Customs  
(Service Tax Wing)

Room No 263A North Block,  
New Delhi, 28<sup>th</sup> September, 2012

To  
Chief Commissioner of Customs and Central Excise /  
Central Excise & Service Tax (All)  
Directors General of Service Tax /Central Excise  
Intelligence /Audit/Systems;  
Commissioner of Customs and Central Excise/ Central  
Excise and Service Tax/ Service Tax (All)

Madam/Sir,

**Subject: Filing of ST-3 only for the period 1<sup>st</sup>  
April to 30<sup>th</sup> June 2012**

In terms of sub-rules (1) and (2) of Rule 7 of the Service Tax Rules, 1994, the half yearly return for the period 1<sup>st</sup> April to 30<sup>th</sup> September 2012, is to be filed by 25<sup>th</sup> October, 2012. In the current financial year , an assessee would have had to give data with respect to specific services and the corresponding legal provisions for the period 1-4-2012 to 30-6-2012. The data for the period 1-7-2012 to 30-9-2012, would have been with respect to different services and the corresponding legal provisions. Combination of all these provisions into one return would have made the return complex for the assesseees .

2. I am directed to inform you that it has been decided that assesseees have to provide data only for the period 1-4-2012 to 30-6-2012 in the first half yearly return which is due on 25-10-2012. (The data for the period from 1-7-2012 to 30-9-2012 should not be filed . Modifications will be made in the ACES so that any data filed for this period is rejected. Till such time as the modifications are made, ACES will not be accepting returns) Accordingly notification 47/2012 dated 28-9-2012 has been issued today.

3. Data for the period 1-7-2012 to 30-9-2012 will have to be furnished in a return in a revised format. The revised format of the return and the last date for filing it will be indicated separately.

4. The above information may be communicated to departmental officers and assesseees. Hindi version to follow.

Yours faithfully,  
(S.M. Tata)  
Commissioner( Service Tax)  
Tel/Fax: 011-23092275

## Order 3/2012 - Due date for filing of Service Tax return

F.No.137/99/2011-Service Tax

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

New Delhi, the 15th October, 2012

### **ORDER NO: 3/2012**

In exercise of the powers conferred by sub-rule(4) of rule 7 of the Service Tax Rules, 1994, the Central Board of Excise & Customs hereby extends the date of submission of the return for the period 1<sup>st</sup> April 2012 to 30<sup>th</sup> June 2012, from 25<sup>th</sup> October, 2012 to 25<sup>th</sup> November,2012.

The circumstances of a special nature which have given rise to this extension of time are as follows:

- a) ACES will start releasing the return in Form ST3 in a quarterly format, shortly before the due date of 25<sup>th</sup> October,2012.
- b) This will result in all the assesses attempting to file their returns in a short time period, which may result in problems in the computer network and delay and inconvenience to the assesses.

(S.M. Tata)  
Commissioner Service Tax  
Central Board of Excise and Customs

## **SERVICE TAX INSTRUCTION**

Dated 22nd February, 2013

### **F.No.137/98/2006-CX-4 (Part-I)**

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs

(Service Tax Wing)

New Delhi

To

All Chief Commissioners of Central Excise/Customs and Central Excise  
Directors General of Service Tax /Central Excise Intelligence  
/Audit/Systems;

All Commissioners of Central Excise/Customs and Central Excise

All Commissioners of Service Tax

Commissioners LTU Mumbai/Delhi

All Additional Directors General Systems

### **Revised Form ST 3**

Attention is invited to this office letter dated 28th September 2012 issued from F.No.137/22/2012-

Service Tax (copy of which can be accessed at [www.cbec.gov.in](http://www.cbec.gov.in)), wherein it was informed, inter alia, that in the ST- 3 return which was due by 25-10-2012, assesseees had to provide data only for the period 1-4-2012 to 30-6-2012. It was also informed therein that data for the period 1-7-2012 to 30-9-2012 would have to be furnished in a return in a revised format and that the revised format of the return and the last date for filing it would be indicated separately.

2. Data for the remaining portion of the half year (i.e. 1-7-2012 to 30-9-2012) can now be furnished by the assesseees in the revised Form ST3, which has been notified vide notification 1/2013-Service

Tax dated 22-2-2013. Since ordinarily this would have formed part of the return, the due date of which was 25th October 2012, rule 7(2) of the Service Tax Rules 1994 has also been amended vide the same notification, so as to provide that the last date for filing the return covering the period 1-7-2012 to 30-9-2012 is 25-3-2013. It is clarified that when filing this return, assesseees need to fill in data only for the period 1-7-2012 to 30-9-2012.

3. The paper version has to be notified for legality (reference paragraph 2 above). It must however be borne in mind that in terms of rule 7(3) of the Service Tax Rules 1994, all returns have to be filed electronically.

The electronic version, to be completed by the assessee, may therefore differ in certain aspects from the paper version. For example, for certain fields, drop down menus from which an option has to be chosen, will be there in the electronic version but not in the paper version. Similarly provisions in the electronic version to add rows or validate entries cannot be appropriately indicated in the paper version. The revised Form ST-3 is expected to be available on ACES by the first week of March. However in the event of any delay, the last date will be suitably extended and adequate time given so that no inconvenience is caused to the assesseees. The assesseees are advised to access the ACES website wherein updates will be given.

4. The objective behind revising the ST-3 form has been to retain the existing structure, which both the assesseees and the departmental officers are familiar with, while making some changes required after 1-7-2012. Assesseees are expected to fill in service wise data as before, for effective use of the data available consequent to the restoration of accounting codes. In the interregnum, the assessee might not be able to do so, as duty payment was not required to be service wise. While recognizing this difficulty, assesseees are requested to provide service wise data, to the extent possible, for this period also.

5. The above information may be communicated to departmental officers and assesseees. Hindi version to follow.

Sd/- (S.M. Tata)

Commissioner (Service Tax)

## **Order 2/2013 - ST-3 [30 April 2013]**

F.No.137/99/2011-Service Tax  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

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New Delhi, dated the 12th April, 2013

### **Order No.02/2013-Service Tax**

In exercise of the powers conferred by sub-rule(4) of rule 7 of the Service Tax Rules, 1994, the Central Board of Excise & Customs hereby extends the date of submission of the Form ST-3 for the period from 1<sup>st</sup> July 2012 to 30th September 2012, from 15<sup>th</sup> April, 2013 to 30th April, 2013.

The circumstances of a special nature, which have given rise to this extension of time, are as follows:

“Assessees have represented about difficulties in filing returns. While this aspect is being attended to, there should not be any delay and inconvenience to the assessees.”

Himani Bhayana  
Under Secretary (Service Tax)  
Central Board of Excise and Customs

To  
All Chief Commissioners of Central Excise / Customs and Central Excise  
Directors General of Service Tax /Central Excise Intelligence /Audit/Systems All Commissioners of Central Excise/ Customs and Central Excise  
All Commissioners of Service Tax  
All Commissioners LTU  
All Additional Directors General Systems

## **Order 3/2013 - ST-3 [31 August 2013]**

F.No.137/99/2011-Service Tax  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
\*\*\*

New Delhi, dated the 23<sup>rd</sup> April, 2013

Order No: 03/2013-Service Tax

In exercise of the powers conferred by sub-rule(4) of rule 7 of the Service Tax Rules, 1994, the Central Board of Excise & Customs hereby extends the date of submission of the Form ST-3, for the period from 1<sup>st</sup> October 2012 to 31<sup>st</sup> March 2013, from 25<sup>th</sup> April, 2013 to 31<sup>st</sup> August, 2013.

The circumstances of a special nature, which have given rise to this extension of time, are as follows:

“The Form ST-3, for the period from 1<sup>st</sup> October 2012 to 31<sup>st</sup> March 2013, is expected to be available on ACES around 31<sup>st</sup> of July, 2013”.

Himani Bhayana  
Under Secretary (Service Tax)  
Central Board of Excise and Customs

To  
All Chief Commissioners of Central Excise / Customs and Central Excise  
Directors General of Service Tax /Central Excise Intelligence /Audit/Systems All Commissioners of Central Excise/ Customs and Central Excise  
All Commissioners of Service Tax  
All Commissioners LTU  
All Additional Directors General Systems



## **Order 4/2013 - ST-3 [10 September 2013]**

F.No.137/99/2011-Service Tax  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

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New Delhi, dated the 30<sup>th</sup> August, 2013

### **Order No: 4/2013-Service Tax**

In exercise of the powers conferred by sub-rule(4) of rule 7 of the Service Tax Rules, 1994, the Central Board of Excise & Customs hereby extends the date of submission of the Form ST-3 for the period from 1<sup>st</sup> October 2012 to 31<sup>st</sup> March 2013, from 31<sup>st</sup> August, 2013 to **10<sup>th</sup> September, 2013**.

The circumstances of a special nature, which have given rise to this extension of time, are as follows:

“ Difficulties have been faced by assesseees in uploading the offline utilities”.

Himani Bhayana

Under Secretary (Service Tax)  
Central Board of Excise and Customs

To  
All Chief Commissioners of Central Excise / Customs and Central Excise  
Directors General of Service Tax /Central Excise Intelligence /Audit/Systems All Commissioners of Central Excise/ Customs and Central Excise  
All Commissioners of Service Tax  
All Commissioners LTU  
All Additional Directors General Systems

**F.No: 137/116/2012- E-payment 1 lacs**

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
Service Tax Wing  
\*\*\*

New Delhi the 22<sup>nd</sup> November, 2013

To  
All Chief Commissioners of Central Excise / Customs  
and Central Excise  
Directors General of Service Tax /Central Excise  
Intelligence /Audit/Systems  
All Commissioners of Central Excise/ Customs and  
Central Excise  
All Commissioners of Service Tax  
Commissioners  
Mumbai/Delhi/Bangalore/Chennai/Kolkata  
All Additional Directors General Systems  
Joint Secretary TRU-I & II

LTU

Madam/Sir,

**Subject: Lowering of the threshold for e-  
payment to rupees one lakh**

In terms of the proviso to rule6(2) of the Service Tax Rules, 1994, an assessee who has paid a total service tax of rupees ten lakh or more, including the amount paid by utilisation of CENVAT credit in the preceding financial year, shall deposit the service tax liable to be paid by him electronically, through internet banking. Vide notification number 16/2013- Service Tax dated the 22<sup>nd</sup> November, 2013, the proviso has been amended to the effect that an assessee who has paid a total of rupees one lakh or more ( including the amount paid by utilising CENVAT) in the preceding financial year , shall have to deposit service tax electronically, through internet banking.

2. A similar amendment to the third proviso to Rule 8(1) of the Central Excise Rules , 2002 has been made vide notification no 15/2013-Central Excise (N.T.) dated 22<sup>nd</sup> November 2013.

3. Both these notifications shall come into effect from 1<sup>st</sup> January, 2014.

4. All Chief Commissioners are requested to kindly ensure that trade/ public notices are issued immediately so that all assesseees as well as the designated banks are aware of the above changes.

Yours faithfully,

(Rajeev Yadav)  
Director (Service Tax)

**F. No. B1/19/2013-TRU (Pt.) - VCES**

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)  
\*\*\*

New Delhi the 11<sup>th</sup> December, 2013

To,

All Chief Commissioners of Central Excise/Service Tax  
Director General Service Tax  
All Commissioners of Central Excise/Service Tax

Madam/Sir,

**Sub: The Service Tax Voluntary Compliance Encouragement Scheme – issues for clarification – reg**

The undersigned is directed to state that the Board has issued clarifications on issues concerning various aspects of the VCES, vide circulars dated 13.05.2013, 8.08.2013 and 25.11.2013. A FAQ has also been issued on VCES. However, certain instances have come to notice, as mentioned below, that the declarants under the VCES are still facing difficulties.

2. In one instance, the Designated Authority has asked a declarant, who has "tax dues" only for a part of the period covered by the Scheme, to furnish an undertaking that he had no unpaid "tax dues" for the remaining period covered by the Scheme. However, the Scheme does not envisage furnishing of any such undertaking. A declarant may have tax dues only for a part period covered by the Scheme. In terms of the Scheme a declaration of tax dues has to be made in Form VCES-I, which includes an undertaking that the information given in the declaration is correct and complete. Therefore, the Designated Authority should not ask for any other undertaking or declaration beyond what has been prescribed in the Scheme or Rules made there under.

3. In another instance, the Designated Authority has objected to the payment of the first tranche of

50%, payable by 31.12.2013, in installments. It is clarified that the Scheme only prescribes that the declarant would pay a minimum amount of 50% of the tax dues by 31.12.2013. Rest of the payment may be made by 30.6.2014, without any interest, and any amount remaining unpaid on 30.6.2014 shall be paid by 31.12.2014, with interest for the period of delay beyond 30.6.2014. There is no bar to pay these amounts in installments. For example a declarant may pay the 50% amount that he is required to pay by 31.12.2013 in more than one installment. Therefore, payment of 50% "tax dues" in lump-sum may not be insisted to.

4. In some instances, it has been observed that the Designated Authority has raised frivolous/unnecessary queries as regards the veracity and the manner of calculation of tax dues. While the designated authority may cause arithmetical check as regards the correctness of computation of tax dues, the Scheme does not envisage investigation by the designated authority into the veracity of declaration. Only if the Commissioner has reason to believe that the declaration filed by the declarant is substantially false he may, for reasons to be recorded in writing, serve notice on the declarant requiring him to show cause why he should not pay the tax dues not paid or short-paid.

Yours faithfully,

(S.Jayaprahasam)  
Technical Officer (TRU)  
Tel. No.: 2309 5547

**F. No. 137/50/2013-VCES**

**Government of India  
Department of Revenue  
Central Board of Excise & Customs  
Service Tax Wing**

**Dated: December 2, 2013**

To

All Chief Commissioners of Central Excise  
All Chief Commissioners of Customs and Central Excise  
Directors General Service Tax/ Central Excise Intelligence  
All Commissioners of Service Tax  
All Commissioners of Central Excise  
All Additional Directors General, Central Excise Intelligence  
Joint Secretary TRU II

**Madam/Sir**

**Subject:** Action with respect to the Service Tax Voluntary Compliance Encouragement Scheme (VCES)

In continuation of this office letter of even number dated 22-8-2013., which had outlined an Action Plan for VCES, the following points should be noted for compliance during the remaining period of the VCES.

2.1 Since there will be an increase in the number of application in the month of December, more so in the last few days, all Chief Commissioners are requested to ensure that adequate arrangements are made for speedy processing of applications. The time period of thirty days will obviously not be available in cases where applications are filed in the last few days of December. Cases in which declarations are in order must be orally communicated so that 50% of the tax dues are paid by 31-12-2013. DG DGCEI may also suitably instruct his officers so that any references made by Commissionerates are disposed off expeditiously. The Chief Commissioners may also ensure that the offices are kept open Saturdays, to take care of the influx of applications and for timely processing of the same.

2.2 Since three clarifications, dated 13.5.2013, 8.8.2013 and 25.11.2013 have been issued by TRU, Commissioners may ensure that rejections by the Designated Authority are strictly covered by these three clarifications. In this context paragraph 4 of Chairperson CBEC's DO letter dated 6.11.2013 to all Chief Commissioners is also relevant.

**(Lipika Majumdar Roy Choudhury)**  
**Member (Service Tax)**

**F.No.275/05/2014-CX.8A – Validity of Stay**

**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
CENTRAL BOARD OF EXCISE AND CUSTOMS  
LEGAL CELL  
WING 5 'C' HUDCO VISHALA BUILDING  
BHIKAJI CAMA PLACE, R K PURAM  
NEW DELHI**

**Dated: February 19, 2014**

To

All the Chief Commissioners of Central Excise/Customs/Service  
Tax/DGRI/DGCEI/DGST/CC TAR.

**Sub: Judgment of the Hon'ble Allahabad High Court in the case of  
M/s. J.P. Transformers -(2013-TIOL-1152-HC-ALL-ST), Kanpur on the  
validity of Sec 35C (2A) of the Central Excise Act, 1944-reg.**

Sir/Madam,

I am enclosing herewith a copy of the judgment dated 8.10.13 of Hon'ble High Court of Allahabad in a matter of Customs & Central Excise, Kanpur Vs M/s J.P. Transformers - (2013-TIOL-1152-HC-ALL-ST), Kanpur on the issue of validity of the Section 35C (2A) of the Central Excise Act, 1944 for information and necessary action.

2. The High Court has stated as under "Though we are conscious of the pendency of the appeals and workload assigned to the Principal Bench as well as various Benches of CESTAT, we are of the view that entire object and purpose of insertion of sub-section 2A in Section 35C by Section 140 of the Finance Act, 2002 (20 of 2002) w.e.f. 11.5.2002 and third Proviso by Finance Act, 2013 will stand defeated, if the waiver of pre-deposit is granted indefinitely. The judgment in Kumar Cotton Mills Pvt. Ltd. - (2005-TIOL-42-SC-CESTAT) (Supra) cannot be interpreted to give powers to the Tribunal to extend the order of waiver of pre-deposit indefinitely.

3. The above judgment will be useful in effecting recoveries of arrears, where stay orders have been issued by CESTAT and the appeal itself not decided within 365 days of such stay order, In terms of section 35C(2A) of the Central Excise Act, 1944, such stay orders stand vacated after 365 days - (2013-TIOL-1219-CESTAT-DEL).

Encl: As above.

**Joy Kumari Chander  
Member (L&J), CBEC**

**17/1/2012-CX.1 – Proposed amendment in Rule 6 of  
CCR**

**Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
New Delhi**

**Dated: December 23, 2013**

To,

The Chief Commissioners of Central Excise (All),

**Sub:- Amendment of rule 6 of the CCR, 2004-reg.**

Sir,

Attention is invited to the issue of reversal of wrongful availment of credit used in manufacture or production of non-excisable goods. The issue has been under litigation for a while. During a manufacturing process two kinds of goods may come into existence - excisable and non-excisable. Excisable goods can further be divided into two categories - exempted and non-exempted.

2) Provisions of rule 6 of the CCR, 2004 deals with reversal of credit when a manufacturer manufactures both excisable & dutiable products and excisable & exempted products. Similarly a service provider may provide both or taxable and exempted services to which provisions of rule 6 apply. Rule 6 provides machinery provision for quantification of credit needed to be reversed on inputs and input services used in manufacture of exempted goods or in supply of exempted services. However, there is a crucial difference in rule 6 on reversal of credit by a manufacturer vis-a-vis a service provider.

3) Exempted services have been defined such that the services on which no service tax is payable are also considered as exempted service. Thus credit of inputs or input services used in supply of non-taxable services are also required to be reversed under rule 6. However, for a manufacturer such provision does not exist in rule 6. Any raw material, consumables or services which are used in manufacture of non-excisable goods would not attract provisions of rule 6 as the definition of exempted goods would not cover non-excisable goods. Thus rule 6 seems to have no applicability for reversal or recovery of credit on raw material, consumables and input services used for production or manufacture of non-excisable goods.



4) Further the definition of inputs or input services in rule 3 is such that for raw materials & consumables to be considered as inputs or for services to be considered input services, it needs to be used in manufacture of "Final Products". Final Products in turn have been so defined that they are excisable goods. Thus any raw material consumable or services used for manufacture of non-excisable goods do not qualify to be called inputs or input services and accordingly duty paid on them are not eligible to be availed as CENVAT Credit. It can, however be argued that there is no machinery provision in the Cenvat Credit Rules, 2004 to quantify the input or input services credit used in production of non-excisable goods if a manufacturer manufactures/produces both excisable and non-excisable goods, as rule 6 does not apply in such case. One possible way to address the situation would be to amend the definition of exempted goods in the CCR, 2004 such that non-excisable goods would be deemed to be exempted goods. Then the rigour of rule 6 would apply for reversal of CENVAT credit on raw material, consumables and services consumed in production of non-excisable goods.

5) In this regard kindly forward your views on the following -

(i) Whether the amendment suggested above in the definition of exempted goods would enable reversal of credit used in the manufacture of non-excisable goods without any difficulty,

(ii) If there would be difficulties in implementing such an amended rule, please elaborate,

(iii) Number of Show Cause Notices issued and amount of Cenvat credit demanded to be reversed for use in manufacture of non-excisable goods in last three years (2011- 12, 2012-13 and 2013-14 upto November, 2013),

(iv) Any other suggestion in this regard.

6) This issues with the approval of the Member (CX).

**Sd/-**  
**(M.K. Sinha),**  
**Director -CX-1/**

## **18. THE INDIRECT TAX DISPUTE RESOLUTION SCHEME, 2016**

### **Section 209**

(1) This Scheme may be called the Indirect Tax Dispute Resolution Scheme, 2016.

(2) It shall be applicable to the declarations made up to the 31st day of December, 2016.

(3) It shall come into force on the 1st day of June, 2016.

### **Section 210**

(1) In this Scheme, unless the context otherwise requires,—

(a) "Act" means the Customs Act, 1962 or the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994, as the case may be;

(b) "Assistant Commissioner" means the Assistant Commissioner of Customs or the Assistant Commissioner of Central Excise or the Assistant Commissioner of Service Tax, as the case may be;

(c) "Commissioner" means the Commissioner of Customs or the Commissioner of Central Excise or the Commissioner of Service Tax, as the case may be;

(d) "declarant" means any person who makes a declaration under sub-section (1) of section 211;

(e) "designated authority" means an officer not below the rank of Assistant Commissioner who is authorised to act as Assistant Commissioner by the Commissioner for the purposes of this Scheme;

(f) "impugned order" means any order which is under challenge before the Commissioner (Appeals);

(g) "indirect tax dispute" means a dispute in respect of any of the provisions of the Act which is pending before the Commissioner (Appeals) as an appeal against the impugned order as on the 1st day of March, 2016;

(h) "prescribed" means prescribed by rules made under this Scheme;

(i) "tax" includes duty or tax levied under the Act.

(2) Words and expressions used herein and not defined but defined in the Act or the rules made thereunder shall have the meanings respectively assigned to them in the Act or the rules made thereunder.

## **Section 211**

(1) Subject to the provisions of this Scheme, a person (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2016 in such form and manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and manner as may be prescribed.

(3) The declarant shall pay tax due alongwith the interest thereon at the rate as provided in the Act and penalty equivalent to twenty-five per cent. of the penalty imposed in the impugned order, within fifteen days of the receipt of acknowledgement under sub-section (2) and intimate the designated authority within seven days of making such payment giving the details of payment made along with the proof thereof.

(4) On receipt of the proof of payment of tax, interest and penalty under sub-section (3), the designated authority shall, within fifteen days of the receipt of such proof, pass an order of discharge of dues referred to in sub-section (3) in such form as may be prescribed.

## **Section 212**

The provisions of this Scheme shall not apply, if—

(a) the impugned order is in respect of search and seizure proceeding; or

(b) prosecution for any offence punishable under the Act has been instituted before the 1st day of June, 2016; or

(c) the impugned order is in respect of narcotic drugs or other prohibited goods; or

(d) impugned order is in respect of any offence punishable under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or

(e) any detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

## **Section 213**

(1) Notwithstanding anything contained in any provision of the Act, upon the passing of an order under sub-section (4) of section 211, the appeal pending before the Commissioner (Appeals)

shall stand disposed of and the declarant shall get immunity from all proceedings under the Act, in respect of the indirect tax dispute for which the declaration has been made under this Scheme.

(2) A declaration made under sub-section (1) of section 211 shall become conclusive upon the issuance of an order under sub-section (4) of section 211 and no matter relating to the impugned order shall be reopened thereafter in any proceedings under the Act before any authority or court.

#### **Section 214**

(1) Any amount paid in pursuance of a declaration made under sub-section (1) of section 211 shall not be refunded.

(2) Any order passed under sub-section (4) of section 211 shall not be deemed to be an order on merits and has no binding effect.

Explanation.-- For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 213.

#### **Section 215**

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the form and the manner in which a declaration may be made under sub-section (1) of section 211;

(b) the form and the manner of acknowledging the declaration under sub-section (2) of section 211;

(c) the form and the manner of issuing an order of discharge under sub-section (4) of section 211;

(d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this Scheme shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## **19. SWACHH BHARAT CESS**

**117.** (1) This Chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(2) There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Swachh Bharat Cess, as service tax on all or any of the taxable services at the rate of two per cent. on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

(3) The Swachh Bharat Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.

(4) The proceeds of the Swachh Bharat Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Swachh Bharat Cess for such purposes specified in sub-section (2), as it may consider necessary.

(5) The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made thereunder, as the case may be.

## **20. KRISHI KALYAN CESS**

### **Section 158.**

(1) This Chapter shall come into force on the 1st day of June, 2016.

(2) There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Krishi Kalyan Cess, as service tax on all or any of the taxable services at the rate of 0.5 per cent. on the value of such services for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.

(3) The Krishi Kalyan Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.

(4) The proceeds of the Krishi Kalyan Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Krishi Kalyan Cess for such purposes specified in sub-section (2), as it may consider necessary.

(5) The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Krishi Kalyan Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under the said Chapter or the rules made thereunder, as the case may be.

## 21. Budget 2013

### Union FM –Budget Speech (Extracts)

#### Indirect Taxes

**155.** I shall now deal with indirect taxes.

**156.** There will be no change in the peak rate of basic customs duty of 10 percent for non-agricultural products. There will also be no change in the normal rate of excise duty of 12 percent and the normal rate of service tax of 12 percent.

**157.** I have a few proposals on customs duties.

**158.** To encourage manufacture of environment-friendly vehicles, I propose to extend the period of concession now available for specified parts of electric and hybrid vehicles upto 31.3.2015.

**159.** Leather and leather goods is a thrust sector for exports. I propose to reduce the duty on specified machinery for manufacture of leather and leather goods, including footwear, from 7.5 percent to 5 percent.

**160.** To encourage exports, I propose to reduce the duty on pre-forms of precious and semi-precious stones from 10 percent to 2 percent.

**161.** Export duty on de-oiled rice bran oil cake has made our exports uncompetitive. Hence, I propose to withdraw the said duty.

**162.** Prices of unprocessed ilmenite have gone up several fold in the export market. Considering the need to conserve our natural resources, I propose to impose a duty of 10 percent on export of unprocessed ilmenite and 5 percent on export of upgraded ilmenite.

**163.** The aircraft manufacture, repair and overhaul (MRO) industry is at a nascent stage. Encouraging the MRO sector will generate employment besides



other benefits. Hence, I propose to provide certain concessions to the MRO industry, details of which are in the budget documents.

**164.** To encourage domestic production of set top boxes as well as value addition, I propose to increase the duty from 5 percent to 10 percent.

**165.** In order to give a measure of protection to domestic sericulture, I propose to increase the duty on raw silk from 5 percent to 15 percent.

**166.** Steam coal is exempt from customs duty but attracts a concessional CVD of one percent. Bituminous coal attracts a duty of 5 percent and CVD of 6 percent. Since both kinds of coal are used in thermal power stations, there is rampant misclassification. I propose to equalise the duties on both kinds of coal and levy 2 percent customs duty and 2 percent CVD.

**167.** There is an affluent class in India that consumes imported luxury goods such as high end motor vehicles, motorcycles, yachts and similar vessels. I am sure they will not mind paying a little more. Hence, I propose to increase the duty on such motor vehicles from 75 percent to 100 percent; on motorcycles with engine capacity of 800cc or more from 60 percent to 75 percent; and on yachts and similar vessels from 10 percent to 25 percent.

**168.** The baggage rules permitting eligible passengers to bring jewellery was last amended in 1991. Gold prices have risen since, and passengers have complained of harrasment. Hence, I propose to raise the duty-free limit to `50,000 in the case of a male passenger and `100,000 in the case of a female passenger, subject to the usual conditions.

**169.** Next, I shall deal with excise duties.

**170.** The readymade garment industry is in the throes of a crisis. The industry needs a lifeline. There is a demand to restore the 'zero excise duty route' for

cotton and manmade sector (spun yarn) at the yarn, fabric and garment stages. I propose to accept the demand. In the case of cotton, there will be zero duty at the fibre stage also and, in the case of spun yarn, there will be a duty of 12 percent at the fibre stage. The 'zero excise duty route' will be in addition to the CENVAT route now available.

**171.** I propose to totally exempt handmade carpets and textile floor coverings of coir or jute from excise duty.

**172.** As a measure of relief to the ship building industry, I propose to exempt ships and vessels from excise duty. Consequently, there will be no CVD on imported ships and vessels.

**173.** What does a Finance Minister turn to when he requires resources? The answer is cigarettes. I propose to increase the specific excise duty on cigarettes by about 18 percent. Similar increases are proposed on cigars, cheroots and cigarillos.

**174.** SUVs occupy greater road and parking space and ought to bear a higher tax. I propose to increase the excise duty on SUVs from 27 percent to 30 percent. However, the increase will not apply to SUVs registered as taxis.

**175.** The excise duty rate on marble was fixed in 1996. Keeping in view the increase in prices of marble, I propose to increase the duty from ` 30 per sq. mtr to 60 per sq mtr.

**176.** I propose to levy 4 percent excise duty on silver manufactured from smelting zinc or lead, to bring the rate on par with the excise duty applicable to silver obtained from copper ores and concentrates.

**177.** About 70 percent of imported mobile phones and about 60 percent of domestically manufactured mobile phones are priced at ` 2000 or below. Mobile phones enjoy a concessional excise duty of one percent and I do not propose to

change that in the case of low priced mobile phones. However, on mobile phones priced at more than `2000, I propose to raise the duty to 6 percent.

**178.** To reduce valuation disputes, I propose to provide for MRP based assessment in respect of branded medicaments of Ayurveda, Unani, Siddha, Homeopathy and bio-chemic systems of medicine. There will be an abatement of 35 percent.

**179.** As regards service tax, I have only a few proposals. The negative list became effective after the last Budget. Stability in the tax regime is important. Hence, I propose to include only two services which deserve to be in the negative list. They are vocational courses offered by institutes affiliated to the State Council of Vocational Training and testing activities in relation to agriculture and agricultural produce.

**180.** Last year, at the request of the film industry, full exemption of service tax was granted on copyright on cinematography. The industry has now requested to limit the benefit of exemption to films exhibited in cinema halls. I propose to accept the request.

**181.** At present, service tax does not apply to air conditioned restaurants that do not serve liquor. The distinction is artificial, and I propose to levy service tax on all air conditioned restaurants.

**<sup>1</sup>182.** Homes and flats with a carpet area of 2,000 sq.ft. or more or of a value of 1 crore or more are high-end constructions where the component of 'service' is greater. Hence, I propose to reduce the rate of abatement for this class of buildings from 75 percent to 70 percent. Existing exemptions from service tax for low cost housing and single residential units will continue.

**183.** While there are nearly 17,00,000 registered assesseees under service tax, only about 7,00,000 file returns. Many have simply stopped filing returns. We

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<sup>1</sup> This has been amended vide Not. No. 9/2013-ST dated 8 May 2013

cannot go after each of them. I have to motivate them to file returns and pay the tax dues. Hence, I propose to introduce a one-time scheme called 'Voluntary Compliance Encouragement Scheme'. A defaulter may avail of the scheme on condition that he files a truthful declaration of service tax dues since 1.10.2007 and makes the payment in one or two instalments before prescribed dates. In such a case, interest, penalty and other consequences will be waived. I hope to entice a large number of assesseees to return to the tax fold. I also hope to collect a reasonable sum of money.

**184.** There are a few more decisions which entail small gains or losses of revenue. They are reflected in the budget documents.

**185.** My tax proposals on the direct taxes side are estimated to yield `13,300 crore and on the indirect taxes side `4,700 crore.

### **Goods and Services Tax**

**186.** Hon'ble Members will recall that I had first mentioned the Goods and Services Tax (GST) in the Budget speech for 2007-08. At that time, it was thought that GST could be brought into effect from 1.4.2010. Alas, that was not to be, although all States swear by the benefit of GST. However, my recent meetings with the Empowered Committee of State Finance Ministers has led me to believe that the State Governments – or, at least, the overwhelming majority – are agreed that there is need for a Constitutional amendment; there is need for State Governments and the Central Government to pass a GST law that will be drafted by the State Finance Ministers and the GST Council; and there is need for the Centre to compensate the States for loss due to the reduction in the CST rate. I hope we can take this consensus forward in the next few months and bring to this House a draft Bill on the Constitutional amendment and a draft Bill on GST. Hope inspires courage. I propose to take the first decisive step by setting apart, in the Budget, a sum of `9,000 crore towards the first instalment of the balance of CST compensation. I appeal to the State Finance Ministers to

realise the serious intent of the Government to introduce GST and come forward to work with the Government and bring about a transformational change in the tax structure of the country.

## TRU – Budget 2013 – Service Tax

**Government of India  
Ministry of Finance  
Department of revenue  
Tax Research Unit**

\*\*\*

V. K. Garg  
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D.O.F. No. 334/3/2013-TRU  
New Delhi, dated February 28, 2013.  
Dear Sir/ Madam,

**Subject: Union Budget 2013: Changes in Service Tax-reg.**

The service tax changes in Budget 2013 are largely guided by the objectives to provide a stable tax regime and improve voluntary compliance. The important changes are as follows:

**A. Legislative changes**

Following changes are being made in the Finance Act, 1994:

1. There are following changes in relation to the negative list:

(i) The definition of approved vocational course in section 65B(11) is being proposed to be changed to:  
a) include courses run by an industrial training institute or an industrial training centre affiliated to State Council for Vocational Training; and  
b) delete clause (iii) dealing with courses run by an institute affiliated to the National Skill Development Corporation.

(ii) The definition of "process amounting to manufacture or production" in section 65B(40) is being expanded to include processes under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955

(iii) The negative list entry in sub-clause (i) of clause (d) of section 66D is being modified by deleting the word "seed". This will allow the benefit to all other testings in relation to "agriculture" or "agricultural produce".

2. The provisions of section 73 are being modified such that if the grounds for invoking extended period are not sustained, the Central Excise officer will be able to determine the demand for the shorter period of eighteen months.

3. The penalty under section 77(a) is being restricted to Rs 10,000. A new section 78A is also being introduced to impose penalty on directors and officials of the company for specified offences in cases of willful actions.

New provisions are being introduced to prescribe revised punishments for offences in section 89, make certain offences cognizable and others non-cognizable and bailable. The Policy wing of the Board will be issuing detailed instructions in due course. These changes will come into force when the Finance Bill, 2013 is enacted.

### **B. Exemptions**

4. The following changes are being made **w.e.f April 1, 2013** in the exemption notification number 25/2012-ST dated June 20, 2012:

- (i) Exemption by way of auxiliary educational services and renting of immovable property by (and not to) specified educational institutes under S. No 9 will not be available;
- (ii) The benefit of exemption under S. No 15 of the notification in relation to copyrights for cinematograph films will now be available only to films exhibited in a cinema hall or theatre. This will allow service providers to pass on input tax credits to taxable end-users;
- (iii) Exemption under S. No 19 will now be available only to non air-conditioned (non-centrally air-heated) restaurants; the dual requirement earlier that it should also have a license to serve alcohol is being done away with;
- (iv) The exemptions available to transportation of goods by railway and vessel under S. No 20 and services provided by a goods transportation agency (GTA) under S. No.21 are being harmonized. Thus exemption to transportation of petroleum and petroleum products, postal mails or mail bags and household effects by railways and vessels will not be available while the benefit of transportation of agricultural produce, foodstuffs, relief materials for specified purposes, chemical fertilizers and oilcakes, registered newspapers or magazines and defence equipments will be available to GTAs;
- (v) The exemptions under S. No 24 for vehicle parking to general public and S. No 25 for repair or maintenance of government aircrafts are being withdrawn; and
- (vi) The definition of "charitable activities" is being changed by deleting the portion listed in sub-clause (v) of clause (k). Thus the benefit to charities providing services for advancement of "any other object of general public utility" up to Rs 25 Lakh will not be available. However the threshold exemption will continue to be available up to Rs 10 lakh.

### **C. Abatement**

<sup>1</sup>5. The abatement available under S. No 12 of notification 26/2012-ST dated June 20, 2012 for construction of a complex, building, civil structures etc. is being reduced from the existing 75% to 70% for construction other than **residential properties** having a carpet area up to 2000 sq ft **or** where the amount charged is less than Rs 1 crore. This will come into effect from March 1, 2013.

### **D. Voluntary Compliance Encouragement Scheme, 2013 (VCES)**

6.1 A new scheme is proposed to be introduced to encourage voluntary compliance with the following main features:

(i) The scheme can be availed of by non-filers or stop-filers or persons who have not made a truthful declaration in their return. However it will not be applicable to persons against whom any inquiry or investigation is pending by the issue of search warrant or summon or by way of audit;

(ii) The defaulter will be required to make a truthful declaration of all his pending tax dues (from October 1, 2007 to December 31, 2012) and pay at least half of that before December 31, 2013; remaining half to be paid by:

(a) June 30, 2014 without interest; or

(b) By December 31, 2014 with interest from July 1, 2014 onwards;

(iii) On compliance with all the requirements the person will have immunity from interest (as specified), penalties and other proceedings;

6.2 The scheme will come into force when the Finance Bill is enacted. It is clarified that the tax-payers will need to settle their dues for the period after December 31, 2012 under the present law.

### **E. Advance Ruling Authority**

7. The benefit of Advance Ruling Authority is being extended to resident public limited companies.

### **F. Disclaimer and requests**

8. This letter is meant to provide a quick glimpse of the important changes and should not be used in any quasi-

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<sup>1</sup> This has been amended vide Not. No. 9/2013-ST dated 8 May 2013



judicial or judicial proceedings, where only the relevant legal texts need to be referred to.

9. Despite best efforts it is possible that you may find some unintended errors, or omissions. I shall be extremely thankful if you could point out them to me or to my colleagues at the earliest.

10. Please also feel free to contact us in case of any doubt, difficulty, or suggestion relating to interpretation or implementation of the provisions mentioned above. You may also like to contact Shri J.M. Kennedy, Director (TRU) [Tel: 23092634; e-mail: jm.kennedy@nic.in] or Shri G.D. Lohani, Director [Tel: 23092374; e-mail: gd.lohani@nic.in] or Shri Sachin Jain, O.S.D. [Tel: 23092374; e-mail: sachinjainirs@yahoo.com].

11. I express my sincere thanks for your suggestions which provided us rare perspectives on many issues and helped us carry out our task with greater precision.

Sincere regards,

Yours sincerely

(V. K. Garg)

### ***Supply of food in restaurant, 'sale' or 'service'? – CA Pritam Mahure***

In the present article we have analysed the judgment of H'ble Kerala High Court in the case of [Kerala Classified Hotels and Resorts Association [[2013-TIOL-533-HC-KERALA-ST](#)]].

In the aforesaid case the Petitioners in the writ petitions before the H'ble Kerala High Court had challenged the validity of sub clause (zzzzv) and (zzzzw) of clause 105

of Section 65 of the Finance Act, 1994 and Section 66 of the Finance Act, 1994 as amended by the Finance Act, 2011 relating to levy of service tax on taxable services referred therein.

The relevant entries of Finance Act, 1994 read as under:

<p><b>Services by air-conditioned restaurants having licence to serve liquor [Sec. 65 (105) (zzzzv)]</b></p>	<p><b>Services by hotels / inns / clubs / guest houses, etc for short-term accommodation [Sec.65(105)(zzzzw) ]</b></p>
<p><i>services provided or to be provided to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment , at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;</i></p>	<p><i>Services provided or to be provided to any person, by a hotel, inn, guest house, club or camp-site, by whatever name called, for providing of accommodation for a continuous period of less than three months;</i></p>

**Contentions of Appellants and Revenue**

The main of the Appellants and Revenue were as under:

Contentions of Appellants	Contentions of Revenue
<ul style="list-style-type: none"> <li>- The transaction essentially is in the nature of 'sale' of goods and squarely falls under Entry 54 of List II (State List) of the Seventh schedule to the Constitution of India which reads as under: <i>"Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I"</i></li> </ul>	<ul style="list-style-type: none"> <li>- Service tax levied by the Government of India is not for serving alcoholic beverages and it is a tax on the services provided by restaurants and hotels.</li> <li>- It was argued by the Respondent that Service Tax can be imposed on the service involved during the sale of a product and so long as the Statute does not transgress to any restriction contained in the Constitution, contentions regarding lack of legislative power cannot be sustained.</li> </ul>
<ul style="list-style-type: none"> <li>- Levy of Service Tax accommodation was challenged on the ground that it transgresses Entry 62 of List II (State List) of the Seventh schedule is reproduced for ease of referral: <i>"Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling"</i></li> </ul>	<ul style="list-style-type: none"> <li>- Entry 97 of List I (Union List) of the Seventh schedule to the Constitution of India is reproduced for ease of referral: <i>"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists"</i></li> </ul>

### **Questions raised before the Kerala High Court**

In view of the aforesaid the questions that arose for consideration before the H'ble Kerala High Court were:

- i. Whether "taxes on the sale and purchase of goods" in Entry 54 of List II of the seventh schedule covers service in the light of the definition of "tax on sale and purchase of goods" under Article 366 (29A) (f) of the Constitution of India
- ii. Whether the service provided in a hotel, inn, guest house, club etc. imposed with luxury tax under State Act in terms of Entry 62 of List II can be separately assessed and imposed by the Union with service tax, invoking the residuary powers at Entry 97 of List I of the Constitution.

### **Discussion and analysis of the Judgment**

While analysing the aforesaid questions the H'ble Kerala High Court *inter-alia* referred to judgment of Apex Court in the case of ***K. Damodarasamy Naidu*** ([2002-TIOL-884-SC-CT-CB](#)) and ***T.N. Kalyana Mandapam Assn.*** ([2004-TIOL-36-SC-ST](#)). The H'ble Kerala High Court distinguished the judgment of the Apex Court in the case of ***T.N. Kalyana Mandapam Assn. (supra)*** as the question therein was with reference to services rendered by mandap-keepers.

The H'ble Kerala High Court observed that the facts in the instant case were similar to the facts in the case of *K. Damodarasamy Naidu (supra)* wherein while considering the entitlement of the States to levy tax on the sale of food and drink, the Constitutional Bench of the Supreme Court held that "*The tax, therefore, is on the supply of food or drink and it is not of relevance that the supply is by way of a service or as part of a service. In our view, therefore, the price that the customer pays*

*for the supply of food in a restaurant cannot be split up as suggested by learned Counsel”*

In view of the aforesaid discussion, the H’ble Kerala High Court observed that when food is supplied or alcoholic beverages are supplied as part of any service, such transfer is deemed to be a sale and there cannot be a different component of service which could be imposed with service tax in exercise of the residuary power of the Central Government under Entry 97 of List I of the Constitution of India.

Similarly, in the context of Service Tax on Accommodation the H’ble Kerala High Court observed that the service tax is imposed on accommodation is beyond the legislative power of the Central Government.

In view of the aforesaid discussion H’ble Kerala High Court held as under:

- i) 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.*
- ii) That if any payments have been made by the petitioners on the basis of the impugned clauses, they are entitled to seek refund of the same.*

### ***Applicability of the decision***

It is likely that the Revenue would take the matter to the Apex Court. However, it may be noted on facts similar to the aforesaid case the Apex Court has ruled that supply of food in restaurant would amount to ‘sale’ [please see The East India Hotels 2002-TIOL-883-SC-CT-LB,

Northern India Caterers v. Lieutenant Governor of Delhi : (1978) 48 STC 386 (SC) and also *K. Damodarasamy Naidu (supra)*]. Also, as the judgment is delivered after analysing Constitutional provisions the judgment of H'ble Kerala High Court could apply to Post-Negative List scenario too.

## ST on Foreign Bank Charges

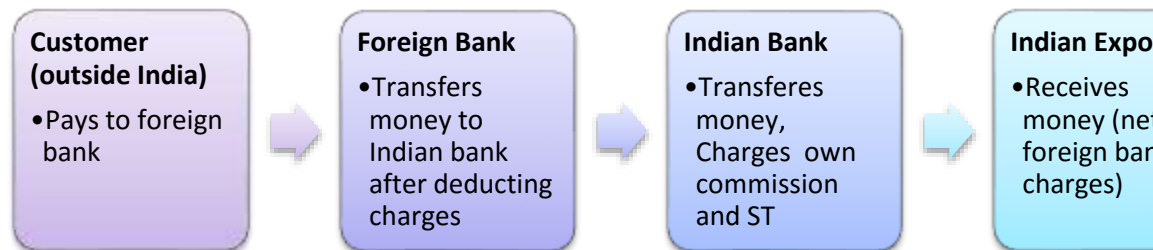
CA PRITAM MAHURE

Exporters across the country pay bank charges to various foreign banks (which are located outside India) for realisation of export proceeds. The issue herein is whether Service Tax is payable by Exporters (under Reverse Charge Mechanism) on the payment of bank charges to Foreign Banks (located outside India)? In the following paragraphs let's try to find answer to the same.

Typically, the transaction mechanics in such situation is as under:

- For exports, Exporter's bank in India (Say SBI -Mumbai) forwards export documents to its counterpart (say ABC - New York) for necessary action
- Subsequently, ABC - New York acts as a collecting bank for realizing export proceeds from customers.
- ABC - New York collects export proceeds in foreign exchange and remits the same (after deducting Foreign Bank charges) to SBI – Mumbai
- SBI - Mumbai after receiving the foreign exchange converts the same in Indian currency and thereafter deduct their service charge on which it levies Service Tax

The flow of money can be captured in pictorial terms as under:



Wef 1 July 2012, Service tax is being levied on **all services** except services which are covered under 'Negative list' or otherwise exempt. This approach to tax services is also called as 'Negative List' based approach to taxation. Section 66B specifies the charge of service tax which is essentially that service tax shall be levied on all services provided or agreed to be provided in the **taxable territory**, other than services specified in the negative list. Service Tax is payable by the provider of taxable service. However, a recipient of service is liable to pay Service Tax (also known as **Reverse Charge Mechanism**) *inter-alia* in case where the service is provided by a person located in non-taxable territory and received by a person located in taxable territory (in view of Rule 2 (1) (d) of Service Tax Rules, 1994 read with Not. No. 30/2012-ST).

In the instant case, services of remittance are provided by foreign banks for consideration. Under the Negative List Regime, the said activity of providing remittance would qualify as an activity for consideration. However, as mentioned above, under Negative List regime, Service tax applies only if the services are provided in "taxable territory". **Thus, the important question is whether the said bank services are provided by the Foreign Bank to Indian Exporter in the "taxable territory"?**

Under Section 66C of the Finance Act, 1994 the Central Government has framed **Place of Provision of Services Rules, 2012** (PoPSR) for determination of 'place of provision of service'. These Rules will guide us to the answer whether the said services are provided in the taxable territory.



*Prima-facie*, Rule 3 and Rule 9 of PoPSR seems relevant. The said Rules are reproduced below for ease of referral:

**Rule 2 (b): "account"** means an **account bearing interest** to the depositor, and includes a non-resident external account and a non-resident ordinary account;

**Rule 3: Place of provision generally.-** The place of provision of a service shall be the location of the recipient of service:

*Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.*

**Rule 9: Place of provision of specified services.-** The place of provision of following services shall be the location of the service provider:-

(a) Services provided by a **banking company**, or a financial institution, or a nonbanking financial company, to **account holders**;

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It may be noted that the term used in Rule 9 of PoPSR is 'account' holders. The term 'account' is defined in the Rule 2 (b) to *inter-alia* mean **an account bearing interest to the depositor**. Even the Education Guide clarifies that Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule .Typically, the services provided by Foreign Banks to Exporter will not get covered under Rule 9 PoPSR (as it will not qualify as 'account' in terms of the definition).

Thus, the services provided by Foreign Banks will get covered under Rule 3 of PoPSR (being residual Rule). As per Rule 3 of PoPSR, the place of provision of service

would be 'location of recipient of service'. In the instant case, the recipient is Exporter located in India (other than J&K). Given this, the place of provision of service would be India (other than J&K) i.e. in taxable territory.

In the instant case, as the service is provided by a person (Foreign Bank) located in a non-taxable territory to Exporter (which is located in taxable territory). Given this, as per Rule 2 (1) (d) of Service Tax Rules, 1994 read with Not. No. 30/2012-ST, Service Tax would be payable by the recipient of the service i.e. Exporter. Thus, Exporter would be liable to pay Service Tax on the Foreign Bank charges.

### **Contrary view**

There is also an alternative school of thought that in absence of privity of contract between Exporter and Foreign Bank and thus Exporter is not availing the services of Foreign Bank and the services of Foreign Bank are actually hired by bank in India and thus, Exporter is not required to pay service tax under reverse charge mechanism. However, this position may be highly litigative for following reasons:

1. Due to Reserve Bank of India guidelines, foreign banks cannot directly remit the money to Indian exporter and the same has to be remitted through Indian bank of exporter. Thus, to this extend the exporter is agreeing to be party to contract with foreign bank and thus is further demonstrated by the act of the exporter (i.e. by accepting the consideration which is net of foreign bank charges).
2. Also, it may not be out of place to mention that we have observed that the Service Tax Department has issued Show Cause Notices in the past (before 1 July 2012) to various exporters for non-payment of Service tax on

Foreign Bank charges<sup>1</sup>. Also, non-payment of Service Tax on Foreign Bank charges was taken up by **Comptroller General of India**<sup>2</sup>

**On practical basis**, as the Negative List law is recently introduced and this being an industry issue, Exporter should write letter to banks to obtain a suitable clarification for following:

- a. Whether the Indian bank charges are inclusive of Foreign Bank charges (on which Service Tax is charged by Indian bank). If yes, then Exporter need not pay Service Tax on the same (as Service tax on the entire amount including foreign charges would be paid by the Indian Bank).
- b. In other cases, in respect of provision of service by Foreign Banks, the Exporter should pay Service Tax.

### **Going forward**

Going forward, as a relief to exporters, isn't it a good idea to provide exemption to exporter for the aforesaid services same as Not. No. 42/2012-ST (which provides for exemption to services of commission agent located outside India to exporter of goods).

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<sup>1</sup> [www.cenextrajkot.nic.in\\_oio\\_stax\\_13\\_ST\\_2011](http://www.cenextrajkot.nic.in_oio_stax_13_ST_2011)

<sup>2</sup> Report No. 11 of 2010-11 Indirect Taxes - Central Excise)

## **CEVAT Credit of ST paid under VCES**

### ***Issue***

The issue that is discussed in the instant article is 'Whether CENVAT Credit of Service Tax paid under by a Service Provider availing Voluntary Compliance Encouragement Scheme (VCES) scheme is available to the Service Receiver?' Herein, the service tax could be paid by vendor of the service receiver and a supplementary invoice could be raised by the said vendor or by service receiver himself as a recipient of service (under reverse charge mechanism).

### ***Legal provisions***

In this regard, it is pertinent to note that the VCES does not provide availment of CENVAT Credit and availment of CENVAT Credit is governed CENVAT Credit Rules, 2004 (CCR). Even in the Circular No. 170/5/2013-ST dated 8 August 2013 the Department has stated that "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".

Typically, a service provider or manufacturer can avail CENVAT Credit if it qualifies as 'input service'.

In this regard, Rule 9 (1) (e) of CCR provides that CENVAT credit is available on the basis of 'a *challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax*'. However, it is pertinent to note that Rule 9 (1) (bb) of CCR provides as under:

*'(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the **additional amount of tax became recoverable** from the provider of service **on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention** of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax '*

### ***Analysis***

Thus, though generally the CENVAT credit of service tax paid is admissible if the underlying service qualifies as 'input service', still in terms of Rule 9 (1) (bb) of CCR, the same would be rendered inadmissible where:

- a. ***Additional amount of tax became recoverable*** from the provider of service

- b. ***On account of non-levy or non-payment or short-levy or short-payment by reason of:***
- i. ***Fraud or***
  - ii. ***Collusion or***
  - iii. ***wilful mis-statement or***
  - iv. ***suppression of facts or***
  - v. ***contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax***

Thus, in case the Service Tax is paid under VCES scheme, the question that needs to be answered is ***'Whether payment of Service Tax under VCES scheme per se amounts to acceptance of the allegations that non-payment or short-payment was the result of any fraud, collusion or suppression of facts etc?'***

In this regard, there is an apprehension that when the assessee is paying by availing VCES, assessee is 'indirectly' accepting that the he had contravened provisions and now he intends to correct the same. Also, VCES scheme itself is designed to grant immunity from 'penalty' and 'prosecution' (thus contravention is 'assumed'/ 'in-built' in the VCES). This could trigger applicability of Rule 9(1)(bb) of the CCR and consequent

denial of CENVAT Credit. Also, the Department may invoke section 109 of the Finance Act, 1994 which provides that amount paid under VCES shall not be refundable in any circumstances.

As regards, Departments view on this issue, it is apparent from the above clarification (Circular No. 170/5/2013-ST dated 8 August 2013), that a clear view on eligibility of Cenvat credit of amount paid under VCES has not been explained by the Department.

However, the assessee can take recourse to the judgment of the Larger Bench in the case of Bosch Chasis System India Ltd [\(2008-TIOL-1764-CESTAT-DEL-LB\)](#) wherein it was held that in case the assessee pays differential duty on receipt of show cause notice and taking recourse to **Settlement Scheme** then it does not mean admission of fraud by assessee. The Larger Bench observed that whether fraud was committed by assessee or not is a question of fact to be decided basis appreciation of facts of each case. Thus, Rule 9(1)(bb) of CCR will not be applicable by de-fault.

Further, it is pertinent to note that as regards, Rule 9 (1) (e) of CCR there are no restrictions similar to 9 (1) (bb). Thus, in scenario where assessee pays Service Tax

under Reverse Charge Mechanism by availing VCES, *per-*  
se denial will not be applicable.

***Clarification by H'ble Finance Minister in VCES  
seminar***

Recently, at a VCES Seminar organised by Institute of Chartered Accountants of India (ICAI) at Mumbai, I was fortunate enough to raise the aforesaid issue before the H'ble Finance Minister. In response to this issue, the H'ble Finance Minister clarified that the CENVAT credit would be available to the service receiver and a suitable clarification would be issued to further clarify the doubts.

***Way forward***

In view of the aforesaid apprehension that there could be denial of CENVAT Credit of the amount paid under VCES, it would be in the interest of VCES that a clarification on the aforesaid should be issued at earliest.



## Applicability of VAT on flat

The article analyses the recent judgment delivered on 26/9/2013 by the Larger Bench of the Apex Court in the case of Larson & Toubro Ltd [2013-TIOL-SC-CT-LB].

### A. *The Issue*

The underlying issue before the Apex Court in the aforesaid case was whether the transaction of sale of incomplete flat/unit is a 'works contract' and thus subject to Value Added Tax/ VAT.

### B. *Background*

Earlier in 2005, the Apex Court in the case of K Raheja Development Corporation [2005-TIOL-77-SC-CT] had *upheld* the charge of the VAT on a contract for building and subsequent sale of immovable property. Later, in the year 2008 validity of the K Raheja 2005 case was *doubted* in the case of Larsen and Toubro Ltd [2008-TIOL-186-SC-CT] and the aforesaid decision of Raheja Development was referred to Larger Bench.

### C. *Key argument of Assessee/petitioners*

1. Intention of Article 366 (29A) (b) of the Constitution of India is to tax the transfer of property in goods (whether as goods or '**in some other form**'). 'In some other form' would not mean as an immovable property.
2. Main intention of developer to sell fully constructed flat only. Even, by applying the test of enforceability, common parlance test (view of the reasonable man), test of substance of the contract and assignment test one can infer that the contract is to purchase flat (and not a contract for 'works contract')
3. Developer does not construct **at the behest** of the flat purchaser as on various occasions the flat is constructed without there being any booking for the said flat. Ownership in the material used in the construction remains with the promoter/developer and the said ownership passes to the flat purchaser only on the eventual conveyance of the flat
4. Goods/materials are purchased from the dealers registered under the Act levying VAT again as 'works contract' would amount to **double taxation**
5. State has been levying stamp duty on agreement of sale under Entry 25 and not under Entry 63 and hence the

State does not consider an agreement for sale to be a works contract

6. Without prejudice to the above arguments, if the aforesaid activity is a works contract then the same would be a works contract only from the stage when the developer enters into a contract with the flat purchaser

#### ***D. Key argument of Revenue/respondent***

1. The whole idea by insertion of Article 366 (29A) (b) in the Constitution of India is to make the materials used in the building activity liable to sales tax. The taxable event is deemed sale. All that is required to be enquired into is as to whether the goods were involved in the execution of the works.
2. The expression "works" is extremely **wide** and nothing in Article 366 (29A) (b) restricts its meaning. Thus, construction of flat is one of the species of 'works contract'
3. There is no question of ascertaining the **dominant** intention of the contract now since the sale of goods element is a deemed sale under Article 366(29A)(b) and can be taxed separately.
4. Different aspects of the same transaction can involve more than one taxable event. There is nothing to prevent the taxation of different aspects of the same transaction as separate taxable events.
5. View taken in Raheja Development is correct and needs no reconsideration – both on merits as well as on the basis of binding precedents
6. Even in case of flats/ unit sold post completion, VAT is leviable as the building was intended for sale and is in fact sold

#### ***E. Judgment***

##### ***a. 46<sup>th</sup> Amendment and Article 366 (29A)***

The Apex Court observed that as a result of clause Article 366 (29A), it is open to the States to divide the works contract into two separate contracts by legal fiction. In view of this deeming legal fiction, it is not necessary to ascertain what the dominant intention of the contract is.

Further, the Apex Court observed that its earlier decision in the case of Rainbow Colour Lab [[2002-TIOL-373-SC-CT](#)] (that the division of the contract after 46<sup>th</sup>

Amendment can be made only if the works contract involved a dominant intention to transfer the property in goods and not in contracts where the transfer of property takes place as an incident of contract of service) is no longer good law.

**b. Meaning of the term 'in some other form'**

The Apex Court observed that in the aforesaid deeming fiction the emphasis is on the 'transfer of property in goods whether as goods or **in some other form**'. It held that the expression "in some other form" in the bracket is of utmost significance as by this expression the ordinary understanding of the term 'goods' has been **enlarged** by bringing within its fold goods in a form other than goods. In other words, goods which have by incorporation become part of immovable property are deemed as goods (i.e. 'In some other form' would also mean in the form of immovable property).

**c. Meaning of Works contract**

To distinguish a 'works contract' and a contract for 'sale' of goods the Apex Court referred its earlier observations in the case of Kone Elevators [2005-TIOL-30-SC-CT-LB] wherein it was held that *'Another test often to be applied is: when and how the property of the dealer in such a transaction passes to the customer: is it by transfer at the time of delivery of the finished article as a chattel or by accession during the procession of work on fusion to the movable property of the customer? If it is the former, it is a "sale"; if it is the latter, it is a "works contract"'*.

Further, the Apex Court observed that the term 'works contract' is **amply wide** and it encompasses a wide range and many varieties of contract and it takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and services alone.

**d. Whether sale of flat is a 'works contract'?**

The question before the Apex Court was *'Whether taxing sale of goods in an agreement for sale of flat which is to*

*be constructed by the developer/promoter is permissible under the Constitution?'*

In this regard, the Apex Court held that *'It is obvious that such transaction involves the activity of construction inasmuch as it is only when the flat is constructed then it can be conveyed. Such activity of construction has all the characteristics or elements of works contract. The ultimate transaction between the parties may be sale of flat but it cannot be said that the characteristics of works contract are not involved in that transaction. In a contract to build a flat there will necessarily be a sale of goods element. Works contracts also include building contracts. Effectively and de facto it is the developer who constructs the building for the flat purchaser.*

**e. Valuation**

As regard valuation the Apex Court stated that the value of the goods has to be the value of the goods at the time of incorporation of the goods in works even though property passes as between the developer and the flat purchaser after incorporation of goods.

Apex Court Also clarified that activity of construction undertaken by the developer would be works contract ***only from the stage the developer enters into a contract with the flat purchaser.*** The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government.

**f. Other aspects**

The Apex Court also upheld the Constitutional validity of Explanation (b)(ii) to Section 2(24) of MVAT Act,2002 (brought w.e.f. 20 June 2012).

As regards, Rule 58 (1A) of MVAT Rules, 2005, the Apex Court observed that the State Government of Maharashtra should bring more clarify this Rule.

**g. Summary**

Basis the aforesaid discussion, the Apex Court approved its earlier decision in the case of K Raheja Development Corporation 2005-TIOL-77-SC-CT and held as under:

- Sale of a completed flat / unit would not be works contract.
- Sale of in-complete flat / unit would be works contract. However, the activity would be a Works Contract only from the stage the Developer enters into a contract with the flat purchaser

***H. Remarks***

The tremors of the judgment would not only felt by the industry but also all the buyers of flats/units. Further, it is pertinent to note that the aforesaid judgment is delivered in the context of VAT laws, still could have its share of implications in Service Tax.

Economic Times - Service tax applicable on transport, storage of rice, cotton

Maulik Vyas, ET Bureau Jan 20, 2014, 04.00AM IST

MUMBAI: The prices of rice and cotton that's ginned and baled are likely to rise as their transport and storage have been deemed ineligible for exemption from service tax by the finance ministry.

They are not on the negative list of items on which 12.36% service tax doesn't have to be paid, finance minister P Chidambaram told junior consumer affairs minister KV Thomas in a November 8 letter, a copy of which ET has reviewed. Consumer affairs ministry officials said that they are yet to review the clarification. "We are concerned for cotton as it will have a larger impact and we are still working on it with the finance ministry," one of them said.

Thomas had sought a clarification because of the ambiguity regarding service tax on the transport and storage of the two commodities.

The finance ministry is of the opinion that paddy is an agricultural produce but rice is not since it has been processed and de-husked in a mill, thus excluding them from being classified under "agricultural produce" and exempted from paying service tax.

Agricultural produce, as per the service tax negative list, means anything that hasn't been processed at all or has only been subjected to treatment as is typical by a cultivator or producer that doesn't alter the essential characteristics but makes the commodity ready for sale in the primary market.

"The clarification means farmers or merchants will have to pay 12.36% service tax on storage, loading, stacking, transportation etc of rice and ginned/baled cotton," said **Pritam Mahure** of Pune-based tax advisory firm Lawgical Consultants. "When there is no service tax levied on other essential agriculture products (such as wheat), this step is very strange" as consumers "are already feeling pinch due to inflation."

After a long battle with prices, inflation has only just slowed, giving the central bank some breathing space on interest rates amid a prolonged slump. High inflation and the state of the economy have been partly responsible

for the erosion in the popularity of the United Progressive Alliance government, which is preparing for elections in a few months.

According to Chidambaram's letter, the finance ministry told Thomas that services related to agricultural produce that are in the service tax negative list, according to section 66D(d) of the Finance Act, can't be expanded.

"Certain specified services relating to agriculture or agricultural produce are kept in the negative list. Rice and ginned/baled cotton are not covered by the definition of 'agricultural produce' found in section 65 B (5)," according to the letter. Following the finance ministry's clarification, the Central Warehousing Corporation has instructed customers about the additional levy, with retrospective effect.

## **Economic Times - Tax Tribunal Posts on Pause Due to Paucity of Funds**

January 25, 2014 Dated, 25-01-2014

A tribunal that decides on revenues worth crores of rupees doesn't have the money to pay for postage. The Mumbai office of the Customs, Excise and Service Tax Appellate Tribunal (Cestat) warned the Bombay Bar Association in a January 1 circular that due to paucity of funds (the) postal department has stopped giving services to this office. This would be amusing if it weren't for the annoyance that may be caused.

This office is not in a position to dispatch/deliver hearing, notices, orders, letters, appeal memo etc. to the concerned parties/advocate/consultants, Cestat said. That will add to the burden of anyone fighting tax cases, said **Pritam Mahure** of Pune-based tax advisory firm Lawgical Consultants. (For) assesseees who are already caught in the web of litigation, this is another challenge which they have to face, he said. Now, assesseees whose case is pending in Mumbai Tribunal have to either depute a person who will regularly visit the tribunal office to collect letters or orders every day or week.

However, a department official said Cestat was still able to send letters by speed post, but not parcels. In any case, information will be available on the website. We have just issued a precautionary notice so that the concerned departments and parties can keep track of their cases and cause list through the website, the spokesperson said.

The reason for unpaid bills, while not a huge amount, is that funds haven't been sent from headquarters. Many government departments face a similar challenge. Our monthly postal expenses are around Rs.50,000 and its not paid since last three months. As and when we get the funds, the issue will be sorted out, said the official cited above. Its not just postal expenses the tribunal is finding difficult to pay. Most miscellaneous expenses such as office stationery and utility bills (electricity bills) are pending, said the official.



A lawyer who regularly appears at Cestat said this could mean litigants may miss hearings or not get copies of orders. This could lead to deadlines being missed for filing appeals against ruling. A senior official in the postal department said: Even though both are central government departments, both work independently. The query is related to an individual client of the department and we are not allowed to reveal specifics. The Cestat official said fund shortages happen every year. However, this year it is acute and we are just hoping that postal department doesn't cut down other services, he said.

**Valuation of barter between Landowner and Developer  
– ‘Complex’ construction**

**A. Background**

Developers engaged in construction and sale of residential projects enter into agreements with Landowners for further Development of the Land. Against the transfer of aforesaid land/ land development rights, the Landowner is entitled to constructed build-up area in the proposed developed scheme. For ease of understanding, the aforesaid activity can be divided in two parts as under:

<b>Particulars</b>	<b>Transaction</b>	<b>Consideration</b>
<b>Landowner</b>	Sale of land / land ownership rights by Landowners to Developer	Receives consideration for sale of land from Developer in kind i.e. as a built-up area
<b>Developer</b>	Construction of complex	Receives consideration from Landowner in kind i.e. as a land / Development Rights

As regards transfer of land by Landowner to Developer, the transaction is of sale of land / land ownership rights by Landowner, so no service tax would be payable by Landowner.

As regards construction service by Developer to Landowner against land or land development rights, service tax would be payable as the same will qualify as ‘declared service’ under section 66E (b) of the Finance Act, 1994. Further, levy of service tax on construction of complex has been upheld by the

Apex Court in the case of Larsen & Toubro Ltd [[2013-TIOL-46-SC-CT-LB](#)].

## B. Issue

However, the issue under consideration is what is the 'value' on which service tax is payable on the aforesaid transaction by the Developer?

## C. CBEC Clarifications

In this regard, the CBEC has issued two diametrically opposite clarifications on this issue of valuation of services provided by developer to Landowner as below:

Sr	Source	Value on which developer should pay service tax
1	Circular dated 10.02.2012 (refer para 2.1)	<i>Value, in the case of flats given to first category of service receiver (i.e. landowner), is determinable in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006, as the consideration for these flats i.e., value of land/development rights in the land may not be ascertainable ordinarily. Accordingly, the value of these flats would be equal to the value of similar flats charged by the builder/developer from the second category of service receivers</i>
2	Education Guide dated 20.06.2012 (refer para 6.2.1)	Value, in the case of flats given to first category of service receiver (i.e. landowner) will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly

So, what is the 'value' in the aforesaid case? Is it value of similar flats or value of land?

## D. Analysis

'Value' needs to be determined by referring to **section 67 read with Service Tax (Determination of Value) Rules, 2006**. In this regard, section 67 is reproduced below:

"67. Valuation of taxable service for charging service tax provides –

- (1) Service tax chargeable on any taxable service with reference to its value shall,—
  - (i) in a case where the provision of service is for a consideration in money, be the **gross amount charged** by the service provider for such service provided or to be provided by him;
  - (ii) in a case where the provision of service is for a **consideration not wholly or partly consisting of money, be such amount in money**, with the addition of service tax charged, is equivalent to the consideration;
  - (iii) in a case where the provision of service is for a consideration which is **not ascertainable**, be the amount as may be determined in the prescribed manner

From reading of section 67 of the Act, it can be inferred that 'consideration', is to be considered from the **perspective of service provider** i.e. how much the service provider receives (in cash or kind) for providing the services. Recently in the case of *Bhayana Builders (P) Ltd* [2013-TIOL-1331-CESTAT-DELHI-LB](#), the Tribunal observed that 'Section 67 of the Act deals with valuation of taxable services and intends to define what constitutes the **value received by the service provider** as "consideration" from the service recipient for the service provided. Implicit in this legislative architecture is the concept that **any consideration** whether monetary or otherwise **should have flown or should flow from the service recipient to the service provider and should accrue to the benefit of the later**'.

Given the aforesaid, it can be stated that the consideration should be determined **from the perspective of the service provider** (i.e. how much he receives from service receiver) and consideration cannot be determined from the perspective of service receiver as value derived by him may differ. This

can be illustrated by an example, a doctor charges a patient Rs 10,000 for an operation. The actual value for service receiver (patient) may be much more than the amount charged by doctor, however, the consideration should be restricted to Rs 10,000 i.e. the amount received by the doctor.

Thus, the value of service of construction provided by Developer should be value of land. Given this, if we determine the value from the perspective of Developer the value would be the market price of 'land' received by the Developer.

***E. Circular dated 10.02.2012 - Why it does not lay down correct law***

In my view the Circular dated 10.02.2012 (which states that the value should be value of 'similar flats' charged by Developer to third party buyers) does not lay down the correct law for the following reasons:

- a. Circular dated 10.02.2011 will cease to have effect after the Negative list came into effect (i.e. post 1.7.2012). Education Guide dated 20.06.2012 being the latest clarification amongst the two clarifications, it will be presumed that it has taken into consideration the earlier Circular dated 10.02.2012 & therefore Education Guide should be preferred. Also since it has been issued in the context of the Negative List regime. Also, the Circular dated 10.02.2012 does not take into consideration the amendment introduced by Not. No. 24/2012-ST. Thus, reliance on Education Guide clarification is appropriate.
- b. Section 67 (1) (iii) of the Act, which appears to be relied on by CBEC in the Circular dated 10.02.2012, is applicable in cases where '**value is not ascertainable**'.

Rule 3 of Valuation Rules was amended vide Not. No. 24/2012-ST w.e.f. 1.7.2012 to incorporate that it is applicable only in cases '*where such value is not ascertainable*'. In this regard, the CBEC vide its Circular 334/1/2012-TRU dated

16.03.2012 had clarified that *'...it is proposed to amend Rule 3 of valuation rules to provide that 'prescribed manner' in Rule 3 will be **applicable only in the cases where valuation is not ascertainable**. At present Rule 3 has been inadvertently made applicable to situation where consideration received is not wholly or partly consisting of money, which is fully covered by the Act.'*

Thus, if the value can be determined in terms of section 67 (1) (ii) itself, then **reference need not be made** to section 67 (1) (iii) (and in-turn to Valuation Rules). In the instant case, value of land is determinable since stamp duty is paid on the said value. Thus value should be the land price transferred to Developer (and not value of similar flats given at future date).

- c. As discussed above, consideration should be determined from the **perspective of service provider** i.e. how much the service provider receives (in cash or kind) for providing the services. Thus, value cannot be value of similar flats (as it is the consideration received by Landowner) as consideration is what is received by the seller from the buyer and not the other way around. As complex will be constructed later and may take years to complete and also no other schemes of any other developer / same developer are comparable (as they differ in terms of area, location, time of launch, quality of construction, reputation of developer etc.) so value of similar flats is not available at all (at the time when consideration is received). As service tax is payable at the time of receipt of consideration by Developer, it cannot be predicted as to what will be value at the time of allotment of flat to Landowner. Accordingly, value of consideration received by Developer (in terms of Development Rights) also needs to be determined at or about the same time at which the Development Rights are transferred (and not at the time when the built-up area is transferred to Landowner).

- d. Even in the judgment of *LCS City Makers Private Limited – 2012-TIOL-618-CESTAT-MAD*, the Tribunal held that **had**

**service tax been paid immediately when the land was made available to the builder, the builder could have discharged service tax on such land value**, but since he has not paid the same, the value shall be on the basis of construction charges charged to the buyers.

***F. Way forward***

In view of the diagonally opposite clarifications, the Real Estate industry, Consultants and even Service Tax Officers are not sure which circular is appropriate.

It would appropriate for the CBEC to come out with a clarification and lay the matter to rest.

## **Applicability of Excise duty on Sales Tax Retention**

### **A. Background**

To attract investors/ industries, various State Governments provide for incentives. The methodology to grant the incentives typically can be by way of:

- a. **Sales Tax Retention Scheme** – Herein, the assessee can retain prescribed percentage of sales tax collected from customers
- b. **Sales Tax Exemption** - Sales Tax exemption is available to the assessee for a specified period
- c. **Sales Tax Deferral Scheme** – Assessee can collect sales tax but defers payment of sales tax for a specified period and at the end of specified period, deposits the sales tax collected. In certain cases, premature repayment of the sales tax liability is allowed (calculated at Net Present Value of the future sales tax liability)
- d. **Other methods such as subsidy, input credit refund etc**

### **B. Issue**

The facts before the Apex Court were that the assessee (Super Synotex) collected sales tax from its customers, however, it paid 25% of the Sales Tax collected to the State Government and retained the balance 75% as incentives in accordance with the State Incentive scheme.

In this context the issue was ‘whether 75% the Sales Tax retained by the assessee should form part of ‘transaction value’ and thus subject to Excise Duty?’

### **C. Legal Provisions**

*Pre-1 July 2000: The erstwhile definition of the term*

*'value', was as under:*

*(d) in relation to any excisable goods ...*



*(ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods*

**Post 1 July 2000:** Post 1 July 2000 the definition of 'transaction is as under:

*(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, ...;but does not include the amount of duty of excise, **sales tax and other taxes, if any, actually paid or actually payable** on such goods.*

#### **D. Contentions of the Revenue**

The amount retained as 'incentives' is an additional consideration and thus will form part of value for the levy of excise duty.

#### **E. Contentions of the Assessee**

The amount received was an incentive and therefore was not includible in the assessable value for the purpose of excise. Such retention of sales tax is a deemed payment of sales tax to the State exchequer. The assessee also placed reliance on the CBEC Circular No. [378/11-98-CX](#) dated 12.3.1998.

#### **F. Apex Court Judgment**

##### **a. For the period pre 1 July 2000**

Referring to the terminology used in the definition of 'value' of the period upto 1 July 2000, the Apex Court held that as the terminology used in the statute was **sales tax "payable"**, the amount of 'sales tax (which was otherwise payable, but retained in accordance with Sate legislation, was not includible for excise valuation purposes.

**b. For the period post 1 July 2000**

In this context the Apex Court observed that “...*the amount paid to the State Government is only excludible from the transaction value. What is **not payable** or to be paid as sales tax/VAT, should not be charged from the third customer/party **but if it charged and is not payable or paid, it is a part and should not be excluded from the transaction value**”.*

The Apex Court further stated that ‘*Be that as it may, the clear legislative intent, as it seems to us, is on "actually paid". The question of "actually payable" does not arise in this case...In view of the aforesaid legal position, unless the sales tax is actually paid to the Sales Tax Department of the State Government, no benefit towards excise duty can be given under the concept of "transaction value"*

The Apex Court also held that at the time CBEC had clarified vide circular dated 12.3.1998 the term "value" under Section 4(4)(d) was differently worded (as compared to the terminology used post 1.7.2000) and was not applicable. Further, the Apex Court stated that in view of Ratan Melting & Wire Industries - [2008-TIOL-194-SC-CX-CB](#) Apex Court is not bound by the Circulars.

**G. Remarks**

With due respect to the Apex Court judgment, in my view the judgment is not consistent.

It is pertinent to note that use of term actually ‘payable’ in the definition of the ‘transaction value’ was also significant.

However, there is no discussion on the same in the judgment.

The word ‘payable’ could be interpreted to mean the liability to pay should be there, whether the amount has been paid or not.

The use of the adverb 'payable' as alternative to 'paid' may mean that the sales tax should be actually 'payable' to the State and as per the applicable State laws it is 'payable' (though it is retained if assessee fulfils the prescribed condition).

Further, though sales tax is retained by the assessee still the fact remains that the sales tax collected by the assessee was actually 'payable' to the State and if the assessee does not fulfil the prescribed conditions, the sales tax so retained would become payable to the State.

Further, if the terminology 'actually payable' is interpreted to mean 'actually paid' only then there was no need for the legislators to use the additional words 'actually 'payable' alongwith 'actually paid'. However, surprisingly this argument was neither pressed nor considered.

In the aforesaid case, the entire Show Cause Notice was based on the contention of the Revenue that sales tax retained by the assessee was 'additional consideration'. In this regard, it is pertinent to note that the consideration should typically flow from the buyer whereas in the instant case the consideration is flowing from State Government (as the State Government is granting incentive). Also, the incentives received are in the nature of capital subsidy as incentives are received towards the investment made by the assessee in the particular area. It appears that these arguments were also not pressed / considered by the Apex Court.

#### **H. Going Forward**

This is the latest judgment which has gone against the assessee after FIAT, L & T and has unsettled another established principle. This judgment too create jittery amongst the assessees as the Revenue Officers may use this judgment to issue show cause notices for the various types of incentives (as stated above) received by the assessee from State Government.

## Service Tax on Mid-day meal scheme

To understand the applicability or otherwise of Service Tax on the Mid-day meal scheme the following dates and events are of relevance:

Date	Reference	Particulars
10.09.2004	Section 65 (105) (zzt)	Service Tax on 'Outdoor services introduced
	Not. No. 21/ 2004-ST	Not. No. 21/2004-ST exemption to 'catering provided within the premises of 'academic institution'
	F. No. B2/8/2004-TRU	Vide this Letter the TRU clarified "...in case a cafe, hotels, restaurants etc. delivers food to home on a charge, other than that for the food, is charged (i.e. for delivery) no service tax is levied
01.03.2006	Not. No. 2/ 2006 – ST	Aforesaid Not. No. 21/2004-ST withdrawn
03.09.2010	Not. No.47/ 2010 – ST	Not. No. 47/2010-ST exemption to outdoor catering under the Centrally assisted Meal Scheme by a 'Non-Government Organisation' registered under Central Act or State Act
01.07.2012	Not. No. 25/ 2012-ST	Not. No. 25/2012-ST (Sr. no. 10) provides exemption to catering services provided to an 'educational institution' in respect of education exempt from service tax, by way of catering services for students under any mid-day meal scheme sponsored by Government

### **10.09.2004 to 01.03.2006**

Not. No. 21/2004-ST provided exemption to catering services provided within the premises of academic institution. Thus, Outdoor Catering services provided by any person was exempt provided the same is provided within the premises of 'academic institution'.

However, the aforesaid Not. No. 21 /2004-ST was **withdrawn** w.e.f. 01.03.2006 vide Not. No. 2/2006-ST. Consequently, for the period from 01.03.2006 there was no specific notification exempting Service Tax in respect of services provided under 'Mid-day meal scheme' till notification 47/2010-ST dated 03/09/2010 made its appearance as shown in the Table above and in terms of which outdoor catering provided under the Centrally

assisted Mid-Day Meal Scheme by a '**Non-Government Organisation**' registered under any Central Act or State Act was exempted.

In view of the above, a question arises about the Taxability under Service Tax on:-

- ▶ "Mid-Day Meal" scheme provided by NGOs and non-NGOs for the period from 01.03.2006 to 02.09.2010, and;
- ▶ "Mid-day meal" scheme provided by non-NGO entities from 03.09.2010 to 30.06.2012 as by virtue of notification 47/2010-ST, outdoor catering provided under the Centrally assisted Mid-Day Meal Scheme by a '**Non-Government Organisation**' registered under any Central Act or State Act.

I think the moot question is as to whether providing mid-day meals constitutes "outdoor catering" in the first place. I have tried to analyse in the following passage the taxability or otherwise of the consideration received by the contractor for providing the mid-day meal to school students.

### **What is Mid-day meal scheme?**

In 2001 the Apex Court ordered - *"We direct the State Governments/Union Territories to implement the Mid-day meal Scheme by providing every child in every Government and Government assisted Primary School with a prepared Mid-day meal"*.

*However, reportedly there were logistical difficulties in cooking and providing food in schools. Again in 2004, the Apex Court directed that kitchen sheds should be constructed and cooked meal should be provided to children. However, because of infrastructural challenges in cooking and providing the food to children many States appointed contractors to provide a ready meal/ khichadi.*

***Mid-Day Meal Scheme is promoted and sponsored by the Government of India and its effective administration has been entrusted to the State Government (in Maharashtra, State Government of Maharashtra administers the***

scheme through the Department of Primary Education).

The rate fixed to supply khichadi/ food was per student Rs 1.75/- per student for Standard I to V and Rs 2.50/- per student for Standard VI onwards. In recent years, this rate has increased marginally.

For supply of 'khichadi'/ food, the Contractor receives as consideration the fixed amount from the respective State Government Department.

In the aforesaid scheme of things, let's understand whether the aforesaid supply of ready meal/khichadi qualifies as a 'Outdoor catering service':

Section 65(105)(zvt)	"Taxable service" means any service provided or to be provided by any person, by an outdoor caterer and the term "service provided" shall be construed accordingly.
Section 65(76a)	"Outdoor caterer" means a caterer engaged in providing <b>services in connection with catering</b> at a place other than his own, including a place provided by way of tenancy or otherwise to a person receiving such services.
Section 65(24)	"Caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles and accoutrements for any purpose or occasion.

From the aforesaid provisions (as applicable during Positive List regime) it may be appreciated that "Outdoor caterer" is defined to mean a *caterer engaged in providing **services in connection with catering***. Thus, what is covered under the ambit of the taxable service of 'Outdoor Catering' is '**services in connection with catering**' and pure '**sale**' of food may not get covered under its ambit.

The fact that supply of *khichadi* under Mid-Day Meal Scheme to various schools is 'sale of food' gets fortified from the following:

1. The Contract is only for supply of food/ khichadi to the schools and there is no element of service in the supply of khichadi.
2. ***It may be noted that to supply the khichadi to the school there is a pre-condition for supply of food & that is that the food should be given to school only after it is weighed-up before school authorities.***

3. It needs mention that the students carry their own plates, spoons, glass etc to schools.

Section 65 (24) of Finance Act, 1994 defines 'caterer' to mean *any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or **crocery and similar articles** or accoutrements for any purpose or occasion.*

It, therefore, follows that to qualify as a 'caterer' under the aforesaid definition the person should typically supply food, beverages, crocery etc.

Thus, the consideration received under Mid Day Meal scheme is in **pith and substance only towards 'sale'** of 'goods' viz. cooked khichadi and not towards any 'service'.

The service of transportation of food to the school is just incidental/minimalistic requirement for selling food. TRU vide its letter F. No. B2/8/2004-TRU had clarified that free home delivery food would not get covered under the ambit of 'Outdoor Catering services'.

The Delhi High Court in the context of supply of food to Indian Railways held that "*the transaction between the petitioner-company and Indian Railways for providing food and beverages to the passengers, on board the trains, is a transaction of sale of goods by the petitioner-company to Indian Railways. It is neither a contract for providing services nor a composite contract for supply of goods and providing of services*". [See [IRCTC 2010-TIOL-517-HC-DEL-ST](#)]

It should also be borne in mind that the Mid-Day Meal Scheme is part of the **Sovereign Function** of the Government as the supply of khichadi under Mid Day Meal Scheme is part of the Right to Education. Article 45 of the Constitution of India reads -

**45. Provision for free and compulsory education for children.**-The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.



The Government through its Education Department is performing the mandatory function to provide Mid-Day Meal to every child in school. Thus, the amount received by the Contractor under Mid-Day Meal Scheme is towards implementing the **sovereign function** of the Government. It is towards fulfillment of the '**Sarva Shiksha Abhiyan**' that the Mid-Day Meal scheme is operated.

In view of the above discussion, it can be concluded that the aforesaid act of providing mid-day meals to school students does not constitute an "outdoor catering service" so as to be charged to Service Tax during the period 01.03.2006 to 02.09.2010.

As for the period from 03.09.2010, the Central Government issued notification 47/2010-ST granting exemption to outdoor catering provided under the Centrally assisted Mid-Day Meal Scheme by a '**Non-Government Organisation**' registered under any Central Act or State Act. When the fact of the matter is that this noble deed of providing mid-day meals is also being executed by non-NGOs, who are also paid in the same manner by the State Government, the benefit of exemption ought to have been extended to them too.

The dispute has lost its fizz after introduction of the Negative list of services w.e.f 01.07.2012.

### **Post 1 July 2012**

In the negative list regime, as mentioned at the outset, Notification No. 25/2012-ST vide sr. no. 9 *inter-alia* exempts services **provided to** an educational institution in respect of education exempted from service tax. Catering for the school students under the mid-day meals scheme sponsored by Government is, therefore, exempted being an 'auxiliary educational service'.

It may be mentioned that numerous demand notices have visited the caterers who have supplied khichadi under Mid-day meal scheme to Government schools from Service Tax Department by classifying their services as "Outdoor Caterers".

Taking a note of the exemption notifications (such as Not. No. 25/2012-ST) issued in this regard, it would be worthy if the Central Government either clarifies that the Mid-day meal service cannot be considered to fall within the ambit of "Outdoor Catering Services" or in the alternative issue an exemption notification for the impugned period 01.03.2006 upto 30.06.2012 under the provisions of **section 11C** of the CEA, 1944 as made applicable to Service Tax matters by s. 83 of the FA, 1994.

**It is hoped that the benign Board does the needful before the next academic session begins in the State of Maharashtra.**

### CENVAT Credit - 'Interest'ing issue

The issue under consideration is whether an assessee is required to pay interest if the Cenvat credit availed in terms of Rule 4 (7) of CENVAT Credit Rules, 2004 (CCR) is reversed later (because the payment was not made within 3 months)? In this regard, following scenarios can arise:

<b>Sc en ari o</b>	<b>In vo ic e pa id wi th in 3 m o nt hs fr o m da te of in vo ic e</b>	<b>C e n v at cr e di t a v ai le d</b>	<b>C e n va t cr e di t ut ili ze d</b>
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<b>1</b>	No	Ye s	N o
<b>2</b>	No	Ye s	Ye s

### ***Legal Provisions***

In this regard, Rule 4 (7) of CCR provides that CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is **received**. However, as per Second Proviso to Rule 4 (7) of CCR in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice is **not made within three months** of the date of the invoice the service provider who has taken credit on such input service, is required to pay an amount equal to the CENVAT credit availed on such input service. Further, in case the said invoice is paid subsequently, the output service provider is entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

### ***Analysis***

It is pertinent to note that **interest** is applicable in terms of Rule 14 CCR. As per the said Rule 14 'interest' becomes payable if "**CENVAT credit has been taken and utilised wrongly**".

Thus, in the instant case, it is relevant to analyse whether the cenvat credit has been **taken and utilized wrongly**? The term 'wrongly' is not defined under Service Tax law. As per dictionary meaning 'wrongly' means:

- Incorrect or mistaken<sup>1</sup>;
- violation of a law<sup>2</sup>;

From the use of the term 'wrongly' in the Rule 14 of CCR, it may be inferred that interest would be applicable in cases where cenvat credit is availed incorrectly or by mistake or against violation of law or when it asseesse was aware that it was not available. Conversely, when the cenvat credit is correctly taken and utilised in terms of CCR then provisions of Rule 14 would not apply.

In the instant case, the availment of Cenvat credit is in terms of Rule 4 (7) of CCR which provides that *CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is **received***. Thus, when cenvat credit is availed based on Rule 4 (7), it was in accordance with provisions of the law.

Also, apart from 'wrongful' availment, wherever the Legislators felt that interest should be applicable in CCR, then they have specifically provided for payment of interest in CCR such as:

- Payment of interest in terms of Rule 6 (3)<sup>3</sup> of CCR
- Payment of interest in terms of Second Proviso to Rule 12A<sup>1</sup> of CCR

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<sup>1</sup> P Ramanatha Aiyer's Law Dictionary

<sup>2</sup> *Ibid*

<sup>3</sup> Rule 6 deals with obligation of a manufacturer or producer of final products and a provider of output service

However, no such specific provision for applicability / payment of interest is made in Rule 4 (7).

Further, reference can be had to Rule 4 (5) (a) of CCR which provides for amount equivalent to the CENVAT credit in case the inputs sent for job work are not received back within 180 days. Rule 4 (5) (a) further provides that in case subsequently the inputs are received back the cenvat credit paid earlier can be availed. Thus, it can be observed that Rule 4(5)(a) and Rule 4 (7) of CCR are similar as they both provide for reversal of validly taken cenvat in specified scenario.

Also, reliance can be placed on judgment of Ahmedabad Tribunal in case of Sandvik Asia Ltd<sup>2</sup> in the contest of Rule 4 (5) (a). In the said case the Tribunal observed that Rule 4(5)(a) does not provide for any interest and thus interest would be applicable **only if cenvat credit is 'taken or availed wrongly'** in terms of Rule 14 of CCR.

In view of the aforesaid discussion, the questions raised are answered as under:

Scenario	Invoice paid within 3 months from date of invoice	Cenvat credit availed	Cenvat credit utilized	Whether interest payable on cenvat credit reversed immediately after 180 months
1	No	Y	N	

<sup>1</sup> Rule 12A of CCR deals with procedure for Large tax Payer unit

<sup>2</sup> 2010 (260) E.L.T. 81 (Tri. - Ahmd.)

		e s	o	
<b>2</b>	No	Y e s	Y e s	

It may not be out of place to mention that if the CENVAT credit is **not** reversed even after the prescribed period of 3 months [in terms of second proviso to Rule 4 (7)] then interest would be applicable in terms of Rule 14 of CCR.

## 20. Budget 2015

### **Budget 2015 – Key Service Tax changes in chronological order – Part I – CA Pritam Mahure**

The Budget 2015 has introduced numerous changes with respect to Service Tax. These changes are discussed according to the chronological order i.e. changes applicable from 1<sup>st</sup> March 2015, changes applicable from 1<sup>st</sup> April 2015, changes applicable from date of assent to Finance Bill, changes applicable from the date of notification after assent to Finance Bill, in the following paras.

At the outset it may be relevant to note that the rate of service tax remains 12.36% as it will change to 14% only with effect from a date to be notified after enactment of Finance Bill, 2015.

#### **1. Amendments applicable from 1 March 2015**

##### **a. Aggregator brought under Reverse Charge Mechanism**

Service Tax liability is cast on the '**aggregator**', or any of his representative office located in India, if the service is so provided using the '**brand name**'.

It is also provided that if an aggregator does not have any presence, including that by way of a representative, in such a case any agent appointed by the aggregator shall pay the tax on behalf of the aggregator.

[Refer Not. No. 5/2015-ST and Not. No. 7/2015-ST]

##### **b. Issuing digitally signed invoices and maintaining records electronically made possible**

A provision for issuing digitally signed invoices is being introduced along with the option of maintaining of records in electronic form. The conditions and procedure in this regard shall be notified later by the CBEC.

[Refer Not. No. 5/2015-ST]

##### **c. 'Single' premises registrations to be granted within 2 days**



To enhance the ease of doing business in India, now, it has been provided that service tax registration for '**single' premises** shall be granted within two days of filing the application with requisite documents. Verification, if any, by the Service Tax Authorities can be done post-facto.

[Refer Not. No. 5/2015-ST]

d. **Time for availing CENVAT credit extended to 1 year**

At present, an assessee is required to avail CENVAT credit on inputs and input service within 6 months else the credit may lapse. In this regard, representations were made by the industry chambers to extend the time limit of 6 months.

Accordingly, after paying heed to the demand, now the period for availing CENVAT Credit is being extended to 1 year. It is possible to take a view that this amendment will be applicable for all invoices on which credit is availed after 1 March 2015 irrespective of date of invoice by relying on the judgment of Apex Court in case of Osram Surya (P) Ltd. Appeal (Civil) 2359 of 1999 /2002 (142) ELT 5 (SC)]

It is pertinent to note that there is no time limit restriction for availment of CENVAT credit on capital goods.

[Refer Not. No. 6/2015-CE (NT)]

e. **CENVAT credit availment on directly dispatched goods permitted**

Now, it is permissible to avail /pass-on the CENVAT Credit on the goods which are directly dispatched to the end customers premises without bringing the same to the registered dealer's/ registered importer's customers. This is beneficial provision.

[Refer Not. No. 6/2015-CE (NT) and 8/2015-CE (NT)]

f. **CENVAT credit availed but not utilised can be recovered**

Earlier there was no specific provision for recovery of CENVAT Credit taken but **not utilized**. Now, CENVAT

Credit taken but **not utilized** can be recovered under the provision of section 73. Interest will not be applicable on such recovery, however, (strangely!) penalty could be applicable.

[Refer Not. No. 6/2015-CE (NT)]

g. **Advance ruling extended to resident firms**

Now, resident firms can also obtain Advance ruling. Thus, after extending that facility to public limited companies (from 1 March 2013) and private limited companies (from 11 July 2014), now Advance ruling facility is extended to all 'resident firms'.

In this regard, the term 'resident firms' is defined to include Limited Liability Partnerships (LLP), sole proprietorship and one person company.

[Refer vide Not. No. 9/2015-ST)

h. **Not. No. 42/2012-ST rescinded**

Not. No. 42/2012-ST provided for exemption from service tax (subject to certain conditions) on amounts paid to non-resident commission agent.

From 1 October 2014, in view of the amendment in Rule 9 of Place of Provision of Services Rules, 2012 ('POPSR'), the place of provision of a non-resident 'intermediary' is outside the taxable territory and in-turn no service tax is payable. Thus, as Not. No. 42/2012-ST had lost its relevance, the has been rescinded.

[Refer vide Not. No. 3/2015-ST)

## 2. Amendments applicable from 1<sup>st</sup> April 2015

### **New exemptions included in the Not. No. 25/2012-ST [vide Not. No. 6/2015-ST]**

- a. At present, '*services by way of transportation of the patient to and from a clinical establishment*' by a clinical establishment is not liable to service tax.

Service tax exemption now would be available even when an entity other than clinical establishment (such as

say an individual or firm) provides ambulance for transportation of a patient.

[refer Sr. No.2 of Not. No. 25/2012-ST)

- b. *At present, construction, erection, commissioning, repairs etc of a Common Effluent Treatment Plant ('CETP') is not liable to service tax.*

Service tax exemption now would be available, even in respect of service of treatment of effluent provided by an operator of CETP. This appears to be in line with Governments pet project 'Swachha Bharat Abhiyan'

[refer Sr. No.43 of Not. No. 25/2012-ST]

- c. *At present, services such as cooling, bulk packaging etc in respect of *agricultural* produce carried out **at farm** to make it marketable for primary market is not liable to service tax [vide Section 66D (d)].*

Service tax exemption now would be available, even in respect of service by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables provided it does not alter the essential characteristics of fruits or vegetables.

[refer Sr. No.44 of Not. No. 25/2012-ST]

- d. *At present, services when provided by the Government or local authority are already covered by the Negative List.*  
Service tax exemption now would be available even in respect of service provided of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve provided by non-government entity.

[refer Sr. No.45 of Not. No.25/2012-ST]

- e. *Service tax exemption now would be available even in respect of service provided by way of exhibition of movie by the exhibitor (theatre owner) to the distributor or an association of persons consisting of such exhibitor as one of its members. Thus, it can be construed from the amendment that the Government is recognizing the fact*

that service tax should not be applicable, *inter-alia*, on profit made by Association of Persons.

[refer Sr. No.46 of Not. No.25/2012-ST]

- f. Now, life insurance service provided by way of Varishtha Pension Bima Yojna will not attract service tax.

[refer Sr. No.26A of Not. No.25/2012-ST]

**Withdrawal/ amendment to exemptions included in the Not. No. 25/2012-ST [vide Not. No. 6/2015-ST]**

- g. Now, exemption will not be available in respect of following services of construction, repair, maintenance, renovation or alteration service provided to the Government, a local authority, or a governmental authority:
- a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
  - a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
  - a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

[refer omission of Sr. No.12 (a), (c) and (f) of Not. No.25/2012-ST]

- h. Now, exemptions will not be available in respect of following services:
- Service of Departmentally run public telephone;
  - Service of Guaranteed public telephone operating only local calls;
  - Service by way of making telephone calls from free telephone at airport and hospital where no bill is issued

[refer omission of Sr. No.32 of Not. No.25/2012-ST]

- i. Now, exemptions will not be available in respect of service by way of construction, erection, commissioning,

or installation of original works pertaining to **an airport and port**.

[refer Sr. No.14 (a) of Not. No.25/2012-ST]

- j. At present, exemption from service tax is available in respect of services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theater, excluding services provided by such artist as a brand ambassador.

Now, the exemption is limited in cases where the consideration for such performance is not more than Rs 1 lac. Services provided by an artist as a brand ambassador will continue to attract service tax.

[refer Sr. No.16 of Not. No.25/2012-ST]

- k. At present, exemption is available in respect of service of transportation of by rail or a vessel of goods being **foodstuff** including flours, tea, coffee, jaggery, sugar, **milk products**, salt and edible oil, excluding alcoholic beverages

Now, this exemption is restricted to '*milk, salt and food grain including flours, pulses and rice*'. Thus, it can be observed that, going forward, exemption may not be, inter-alia, available in respect of **tea, coffee, jaggery, sugar, milk products and edible oil**.

[refer Sr. No.20 and 21 of Not. No.25/2012-ST]

- l. Now, exemption will not be available in respect of following services:
- Services provided by a mutual fund agent to a mutual fund or assets management company ('AMC')
  - Services provided by distributor to a mutual fund or AMC
  - Services provided by selling or marketing agent of lottery ticket to a distributor

It is pertinent to note that for the aforesaid services **liability to pay service tax is cast upon the recipient of service**.

[refer omission of Sr. No.29 (c), (d) and (e) of Not. No.25/2012-ST]

- m. At present, services provided to an exporter for transportation of goods by Goods transport agency to port or airport (including transportation to and from Inland container depot or container freight station) are not liable to service tax vide Not. No. 31/2012-ST. Now, this exemption is extended even when goods are exported through Land Customs Station (LCS). This will benefit export to Pakistan, Bhutan, Nepal by LCS.

[refer Not. No.4/2015-ST]

**Changes in abatement provided in Not. No. 26/2012-ST [vide Not. No. 8/2015-ST]**

- a. Transportation of goods by road attracts service tax on 25% value whereas transport goods and passenger by rail attracts service tax on 30%. In case of passenger transport by vessel service tax is payable on 40%.

Now, uniform taxable value of 30% for all aforesaid services is prescribed. Also, a uniform condition of non-availment of CENVAT Credit on inputs, capital goods and input services is prescribed.

- b. At present, transport of passengers by air (without discrimination between aam and khaas aadmi!) attracts service tax on 40% value.

Now, in case of economy class (aam aadmi class!) service tax will continue to be payable on 40% value, however, for the **classes other than economy**, service Tax would be payable on 60%.

- c. Now, abatement of 30% available to services in relation to chit is withdrawn.

**Changes in Reverse Charge Mechanism [vide Not. No. 7/2015-ST]**

- a. At present, when a manpower supply agency and security service agency being an individual/ firm etc provides services to a body corporate, service tax of 25% is to be paid by service provider and 75% is payable by service receiver.

Now, in aforesaid cases, the **entire** (100%) liability is cast on the service receiver.

- b. Now, in respect of services provided by mutual fund agents/ distributors to Mutual fund or AMC and services provided by selling or marketing agent of lottery tickets to a lottery distributor or selling agent, the entire liability to pay service tax is cast on service receiver.

**Changes in CENVAT Credit [vide Not. No. 6/2015-CE(NT)]**

- a. Cenvat Credit of service tax paid under partial reverse charge by the service receiver is allowed on payment of service tax (without linking it to the payment to the service provider).

## Service Tax TRU letter

**F. No. 334/5/2015-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
(Tax Research Unit)**

**M. Vinod Kumar  
Joint Secretary (Tax Research Unit)**

**D.O.F. No. 334/5/2015-TRU  
New Delhi, dated February 28<sup>th</sup>, 2015**

**Dear Madam/Sir,**

**Subject: Union Budget 2015 - Changes in Service Tax - reg.**

The Finance Minister has, while presenting the Union Budget 2015-16, introduced the Finance Bill in the Lok Sabha on the 28<sup>th</sup> of February, 2015. Clauses 105 to 116 of the Bill cover the amendments made to Chapter V of the Finance Act, 1994. Chapter VI of the Bill (clause 117) contains the enabling provisions relating to levy Swachh Bharat Cess, which empowers the government to impose Cess on all or any of the taxable services at the rate of 2% of the value of taxable services. Changes are also proposed in,-

- the Service Tax Rules, 1994 (STR);
- the CENVAT Credit Rules, 2004(Cenvat Rules);

Other changes are being given effect to by inserting new entries, and amending/omitting existing entries in notification Nos. 25/2012-ST, 26/2012-ST, 30/2012-ST and 31/2012-ST. Further, notification No. 42/2012-ST is being



rescinded.

2. It may be noted that changes being made in the Budget are coming into effect on various dates, as indicated in the following paragraphs. These changes are categorized below based on the above criterion:

(i) Changes coming into effect immediately w.e.f. the 1<sup>st</sup> day of March,

2015;

(ii) Changes coming into effect from the 1<sup>st</sup> day of April, 2015 ;

(iii) The amendments which will get incorporated in the Finance Act,

1994 immediately on enactment of the Finance Bill, 2015;

(iv) The amendments made in the Finance Act, 1994, including the

change in service tax rate that will come into effect from a date to be

notified by the Government in this regard after the enactment of the

Finance Bill, 2015 ;

(v) Certain fresh entries and amendments to existing entries in

notification No. 25/12-ST, and certain amendments in the Service

Tax Rules that will come into effect as and when the amendments in

the Negative List and revised rate of Service Tax come into effect; and  
(vi) Chapter VI of the Finance Bill, 2015, regarding levy of Swachh Bharat Cess on all or any of taxable services that will come into effect from a date to be notified.

For ease of reference, the Table at para 14 summarises the changes being made and indicates the dates on which these changes would come into effect.

The salient features of the changes being made are discussed below.

### **3. Service Tax Rate:**

3.1 The rate of Service Tax is being increased from 12% plus Education Cesses to 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax. Thus, the effective increase in Service Tax rate will be from the existing rate of 12.36% (inclusive of cesses) to 14%, subsuming the cesses.

3.2 In this context, an amendment is being made in section 66B of the Finance Act, 1994. Further, it has been provided vide clauses 179 and 187 respectively of the Finance Bill, 2015 that sections 95 of the Finance Act, 2004 and 140 of

the Finance Act, 2007, levying Education Cess and Secondary and Higher Education Cess on taxable services shall cease to have effect from a date to be notified by the Government.

3.3 The new Service Tax rate shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015.

3.4 Till the time the revised rate comes into effect, the 'Education Cess' and 'Secondary and Higher Education Cess' will continue to be levied in Service Tax.

#### **4. Enabling provision for levy of "Swachh Bharat Cess":**

4.1 An enabling provision is being incorporated in the Finance Bill, 2014 (Chapter VI/clause 117) to empower the Central Government to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% on the value of such taxable services. This cess shall be levied from such date as may be notified by the Central Government after the enactment of the Finance Bill, 2015. The details of coverage of this Cess would be notified in

due course.

## **5 Other Legislative changes:**

**5.1 Negative List** - The changes proposed in the Negative List in Section 66 D are as follows:

(i) The Negative List entry that covers “admission to entertainment event or access to amusement facility” is being omitted [section 66D (j)].

Consequently, the definitions of “amusement facility” [section 65 B (9)] and “entertainment event” [section 65B(24)] are also being omitted.

The implication of these changes are as follows,-

(a) Service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks.

(b) Service tax to be levied on service by way of admission to entertainment event of concerts, pageants, musical performances concerts, award functions and sporting events other than the recognized sporting event, if the amount charged is more than Rs. 500 for right to admission to such an event. However, the existing exemption, by way of the Negative List entry, to service by way of admission to entertainment event, namely, exhibition of cinematographic film, circus, recognized sporting event, dance, \_theatrical performance including drama

and ballet shall be continued, through the route of exemption. For this purpose a new entry is being inserted in notification No. 25/12-ST. The term recognized sporting event has been defined in the proposed amendment in the said notification.

(ii) The entry in the Negative List that covers service by way of any process amounting to manufacture or production of goods [section 66D (f)] is being pruned to exclude any service by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption. Consequently, Service Tax shall be levied on contract manufacturing/job work for production of potable liquor for a consideration. In this context, the definition of the term “ process amounting to manufacture or production of goods” [section 65 B (40)] is also being amended, along with the Negative List entry [section 66D (f)], with a consequential amendment in S. No. 30 of notification No. 25/12-ST, to exclude intermediate production of alcoholic liquor for human consumption from its ambit.

(iii) Presently, services provided by Government or a local authority, excluding certain services specified under clause (a) of section 66D, are covered by the Negative List. Service Tax applies on the “support service” provided by the Government or local authority to a business entity. An enabling provision is being made, by amending section 66D (a)(iv), to exclude all services provided by the Government or local authority

to a business entity from the Negative List. Consequently, the definition of “support service” [section 65 B (49)] is being omitted.

Accordingly, as and when this amendment is given effect to, all services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any another entry in the Negative List, shall be liable to service tax .

The above changes in the Negative List shall come into effect from a date to be notified later, after the enactment of the Finance Bill, 2015.

## **5.2 Further amendments in Chapter V of the Finance Act, 1994:**

(i) Services, excluding a few specified services, provided by the government are included in the Negative List. Further, specified services received by the government are also exempt. Hitherto, the term “government” has not been defined in the Act or the notification. This has given rise to interpretational issues. To address such issues, a definition of the term “government” is being incorporated in the Act [section 65 B (26A)].

(ii) The intention in law has been to levy Service Tax on the services

provided by:

(a) chit fund foremen by way of conducting a chit.

(b) distributor or selling agents of lottery, as appointed or authorized

by the organizing state for promoting, marketing, distributing,

selling, or assisting the state in any other way for organizing and

conducting a lottery.

However, Courts have taken a contrary view in some cases, while in some cases the levy has been upheld.

An Explanation is being inserted in the definition of “service” to specifically state the intention of the legislature to levy Service Tax on activities undertaken by chit fund foremen in relation to chit, and lottery distributors and selling agents, in relation to lotteries [section 65 B (44)]. Further, an explanation is being added in entry (i) of section 66D to specifically state that these activities are not covered by the Negative List.

(iii) Section 66F (1) prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such services. An illustration is being incorporated in this section to exemplify the scope of this provision. As illustrated, reference to service provided by the Reserve Bank of India (RBI), in section 66D (b) does not include any agency service provided by other banks to

RBI, as such agency services are input services used by RBI for provision of its main service. Accordingly, banks providing agency service to or in relation to services of RBI, are liable to pay Service Tax on the agency services so provided by virtue of the existing section 66F

(1).

(iv) Section 67 prescribes for the valuation of taxable services. It is being prescribed specifically in this section that consideration for a taxable service shall include:

(a) all reimbursable expenditure or cost incurred and charged by the service provider. The intention has always been to include reimbursable expenditure in the value of taxable service. However, in some cases courts have taken a contrary view. Therefore, the intention of legislature is being stated specifically in section 67.

(b) amount retained by the distributor or selling agent of lottery from gross sale amount of lottery ticket, or, as the case may be, the discount received, that is the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such tickets.

(v) Section 73 is being amended in the following manner:

(a) a new sub-section (1B) is being inserted to provide that recovery of the Service Tax amount self-assessed and declared in the return but not paid shall be made under section 87, without service of any notice under sub-section (1) of section 73; and



(b) sub-section (4A) that provides for reduced penalty if true and complete details of transaction were available on specified records, is being omitted.

(vi) Section 76 is being amended to rationalize the provisions relating to penalties, in cases not involving fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax, in the following manner,-

(a) penalty not to exceed ten per cent. of Service Tax amount involved

in such cases;

(b) no penalty is to be paid if Service Tax and interest is paid within 30 days of issuance of notice under section 73 (1);

(c) a reduced penalty equal to 25% of the penalty imposed by the Central Excise officer by way of an order is to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order; and

(d) if the Service Tax amount gets reduced in any appellate proceeding, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalty ( 25% of penalty imposed) shall be admissible if service tax, interest and reduced penalty is paid within 30 days of such appellate order.

(vii) Section 78 is being amended to rationalize penalty, in cases involving fraud or collusion or wilful mis-statement of suppression of facts or contravention

of any provision of the Act or rules with the intent to evade payment of Service Tax, in the following manner,-

(a) penalty shall be hundred per cent of Service Tax amount involved

in such cases;

(b) a reduced penalty equal to 15% of the Service Tax amount is to be paid if Service Tax, interest and reduced penalty is paid within 30 days of service of notice in this regard;

(c) a reduced penalty equal to 25% of the Service Tax amount, determined by the Central Excise officer by an order, is to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order; and

(d) if the Service Tax amount gets reduced in any appellate proceeding, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25%) shall be admissible if Service Tax, interest and reduced penalty is paid within 30 days of such appellate order.

(viii) A new section 78 B is being inserted to prescribe, by way of a transition provision, that,-

(a) amended provisions of sections 76 and 78 shall apply to cases where either no notice is served, or notice is served under subsection (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015; and

(b) in respect of cases covered by sub-section (4A) of section 73, if no notice is served, or notice is served under sub-section (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the Service Tax amount.

(ix) Section 80, that provided for waiver of penalty in certain circumstances, is being omitted.

(x) Section 86 is being amended to prescribe that remedy against the order passed by Commissioner (Appeal), in a matter involving rebate of Service Tax, shall lie in terms of section 35EE of the Central Excise Act. It is also being provided that all appeals filed in Tribunal after the date the Finance Act, 2012 came into effect and pending on the date when the Finance Bill, 2015 receives assent of the President shall be transferred and dealt in accordance with section 35EE of the Central Excise Act.

(xi) Certain changes have been made in the provisions relating to Settlement Commission. These provisions, contained in the Central Excise Act, 1944, are made applicable to Service Tax, through section 83 of the Finance Act, 1994. For details, the D.O. letter of J.S. (TRU-I) may please be referred to.

## **6 Review of Exemptions :**

6.1 Exemption presently available on specified services of construction, repair, maintenance, renovation or alteration service provided to the Government, a local authority, or a governmental authority ( vide S. No. 12 of the notification No. 25/12-ST ) shall be limited only to,-

(a) a historical monument, archaeological site or remains of national importance, archeological excavation or antiquity;

(b) canal, dam or other irrigation work; and

(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or

(iii) sewerage treatment or disposal. Exemption to other services presently covered under S. No. 12 of notification No. 25/12-ST is being withdrawn.

6.2 Exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn (S. No 14 of the notification No. 25/12-ST). The other exemptions covered under S. No. 14 of notification No. 25/12-ST shall continue unchanged. 6.3 Exemption to services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theater, will be limited only to such cases where amount charged is upto Rs 1,00,000 for a performance (S. No 16 of notification No. 25/12-ST).

6.4 Exemption to transportation of food stuff by rail, or vessels or road will be limited to food grains including rice and pulses, flour, milk and salt. Transportation of agricultural produce is separately exempt, and this

exemption would continue (S. Nos. 20 and 21 of notification No. 25/12-ST).

6.5 Exemptions are being withdrawn on the following services:

- (a) services provided by a mutual fund agent to a mutual fund or assets management company,
- (b) distributor to a mutual fund or AMC,
- (c) selling or marketing agent of lottery ticket to a distributor.

Service Tax on these services shall be levied on reverse charge basis.

(S. No 29 of notification No. 25/12-ST).

6.6 Consequent to imposition of Service Tax levy on service by way of manufacture of alcoholic liquor for human consumption, an amendment is being made in the entry at S. No. 30 of notification No. 25/12-ST to exclude carrying out of intermediate production process of alcoholic liquor for human consumption on job work from this entry. (S. No 30 of notification No. 25/12-ST).

6.7 Exemption is being withdrawn on the following service,-

- (a) Departmentally run public telephone;
- (b) Guaranteed public telephone operating only local calls;
- (c) Service by way of making telephone calls from free telephone at airport and hospital where no bill is issued.

*(S. No. 32 of notification No. 25/12-ST).*

6.8 Existing exemption, vide notification No. 42/12-ST dated 29.6.2012, to the service provided by a commission agent located outside India to an exporter located in India is being rescinded with immediate effect. This exemption has become redundant in view of the amendments made in law in the previous budget, in the definition of “intermediary” in the Place of Provision of Services Rules, making the place of provision of a service provided by such agents as outside the taxable territory. The above changes in notification No. 25/12-ST, except the change mentioned in para 6.6, shall come into effect from the 1<sup>st</sup> day of April 2015. The change mentioned at para 6.6 shall come into effect from a date to be notified after the enactment of the Finance Bill, 2015. The change mentioned at S. No. 6.8 comes into effect immediately.

### **7 New Exemptions:**

7.1 Hitherto, any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from Service Tax. The scope of this exemption is being widened to include all

ambulance services.

7.2 Life insurance service provided by way of Varishtha Pension Bima Yojna is being exempted.

*(Amendment in entry at S. No. 26A of notification No. 25/12-ST refers)*

7.3 Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted.

*(New entry at S. No. 43 of notification No. 25/12-ST).*

7.4 Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables is being exempted.

*(New entry at S. No. 44 of notification No. 25/12-ST).*

7.5 Service provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve is being exempted. These services when provided by the Government or local authority are already covered by the Negative List.

*(New entry at S. No. 45 of notification No. 25/12-ST).*

7.6 Service provided by way of exhibition of movie by the exhibitor (theatre

owner) to the distributor or an association of persons consisting of such exhibitor as one of its members is being exempted. *(New entry at S. No. 46 of notification No. 25/12-ST).*

7.7 Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from Service Tax vide notification No. 31/12-ST dated 20.6.2012. Scope of this exemption is being widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS). *(Amendment in notification No. 31/12-ST refers).*

All the above New Exemptions shall come into effect from the 1<sup>st</sup> day of April, 2015.

**8. New entries being incorporated in notification No. 25/12-ST, to continue exemption to certain activities that are presently covered by the Negative List entries which are being omitted:**

- 8.1 Service by way of right to admission to,-
- i. exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet.
  - ii. recognized sporting events.



iii. concerts, pageants, award functions, musical performances or sporting events not covered by S. No. ii, where the consideration for such admission is upto Rs. 500 per person.

(New entry 46 of notification No. 25/2012-ST and clause (zab) of definitions in the said notification)

These changes shall be made effective from the date the amendments being made in the Negative List concerning the service by way of admission to entertainment events come into effect.

## **9. Abatements:**

9.1 At present, service tax is payable on 30% of the value of rail transport for goods and passengers, 25% of the value of goods transport by road by a goods transport agency and 40% for goods transport by vessels. The conditions prescribed also vary. A uniform abatement is now being prescribed for transport by rail, road and vessel and Service Tax shall be payable on 30% of the value of such service subject to a uniform condition of non-availment of Cenvat Credit on inputs, capital goods and input services.

9.2 At present, Service Tax is payable on 40% of the value of air transport of passenger for economy as well as higher classes, e.g. business class. The abatement for classes other than economy is being reduced and Service Tax would be payable on 60% of the value of such higher classes.

9.3 Abatement is being withdrawn from services provided in relation to chit. Consequently, Service Tax shall be paid by the chit fund foremen on the full consideration received by way of fee, commission or any such amount. They would be entitled to take Cenvat Credit. The proposed rationalization in abatements shall come into effect from the 1<sup>st</sup> day of April, 2015.

## **10. Reverse Charge Mechanism**

10.1 Manpower supply and security services when provided by an individual, HUF, or partnership firm to a body corporate are being brought to full reverse charge. Presently, these are taxed under partial reverse charge mechanism.

10.2 Services provided by,-

(i) mutual fund agents, mutual fund distributors; and  
(ii) agents of lottery distributor are being brought under reverse charge consequent to withdrawal of the exemption on such services. Accordingly, Service Tax in respect of mutual fund agent and mutual fund distributor services shall be paid by the assets management company or, as the case may be, by the mutual fund receiving such services. In respect of agents of lottery, Service Tax shall be paid by the distributor of lottery.

## **11. Service Tax Rules**

11.1 In respect of any service provided under aggregator model, the aggregator, or any of his representative

office located in India, is being made liable to pay Service Tax if the service is so provided using the brand name of the aggregator in any manner. If an aggregator does not have any presence, including that by way of a representative, in such a case any agent appointed by the aggregator shall pay the tax on behalf of the aggregator. In this regard appropriate amendments have been made in rule 2 of the Service Tax Rules, 1994 and notification No. 30/2012-ST dated 20.6.2012

11.2 Rule 4 is being amended to provide that the CBEC shall, by way of an order, specify the conditions, safeguards and procedure for registration in service tax. In this regard Order No. 1/15-ST, dated 28.2.2015, effective from 1.3.2015 has been issued, prescribing documentation, time limits and procedure for registration. It has also been prescribed that henceforth registration for single premises shall be granted within two days of filing the application.

11.3 A provision for issuing digitally signed invoices is being added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures. The conditions and procedure in this regard shall be specified by the CBEC (rule 4, 4A and 5).

11.4 Rule 6 (6A) which provided for recovery of service tax self-assessed and declared in the return under section 87 is being omitted consequent to the amendment in section 73 for enabling such recovery.

This change will come into effect from the date of enactment of the Finance Bill, 2015.

11.5 In respect of certain services like money changing service, service provided by air travel agent, insurance service and service provided by lottery distributor and selling agent, the service provider has been allowed to pay service tax at an alternative rate subject to the conditions as prescribed under rule 6 (7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994. Consequent to the upward revision in Service Tax rate, the said alternative rates shall also be revised proportionately. Amendments to this effect have been proposed in the Service Tax Rules. The amendments specified in para 11.5 shall come into effect as and when the revised Service Tax rate comes into effect.

## **12. Cenvat Credit Rules, 2004**

12.1 Rule 4(7) is being amended to allow Cenvat Credit of Service Tax paid under partial reverse charge by the service receiver without linking it to the payment to the service provider. This change will come into effect from 1.4.2015.

12.2 The period for taking Cenvat Credit is being extended from six months from the date of invoice to one year from the date of invoice.

12.3 Certain other changes are being made in the provisions of the Cenvat Credit Rules, 2004, which, *inter-alia*, include allowing Cenvat Credit on input and capital goods received directly by job workers, defining

“export goods” for the purposes of rule 5, defining “exempt goods” for the purposes of rule 6, making applicable the provision of rule 9(4) to importer dealers, authorizing imposition of restrictions on registered dealers under rule 12AAA, and provisions relating to recovery of credit wrongly taken and imposition of penalty. For details, the D.O. letter of J.S (TRU-I) may please be referred to.

### **13. Advance Rulings:**

The facility of Advance Ruling is being extended to all resident firms by specifying such firms under section 96A (b)(iii) of the Finance Act, 1994.

*(Notification No. 9/2015-ST, dated 1.3.2015 refers)*

### **14. Summary of changes being made and the dates on which they would come into effect:**

#### **With immediate effect (from 1.3.2015)**

- (i) Shifting the liability of payment of service tax on aggregator of a service where service is provided under the brand name of the aggregator
- (ii) Amendments in rules 4, 4A and 5 of the Service Tax Rules, 1994
- (iii) Certain amendments in the Cenvat Credit Rules
- (iv) Rescinding of notification No. 42/2012-ST
- (v) Extending the scope of advance rulings to resident firms

#### **With effect from the 1<sup>st</sup> day of April, 2015**

- (i) Rationalization of exemptions at S. Nos. 12, 14, 16, 20, 21 and 29 of notification No. 25/2012-ST
- (ii) Omitting the entry at S. No. 32 in notification No. 25/2012-ST
- (iii) New exemptions for,-

- Precondition, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables
  - Service by a Common Effluent Treatment Plant operator
  - Varistha Bima Yojana
  - Ambulance services
  - Admission to a museum, zoo, national park, wild life sanctuary, and a tiger reserve
  - Service provided by exhibitor of movie to a distributor or an AOP consisting of exhibitor as one of its member
  - Transport of export goods by road from the place of removal to a land customs station
- (iv) Change in abatement rates and conditions thereof for transport of passengers and goods by train; transport of goods by road by a GTA; transport of goods by vessels; executive/business class travel by air; and withdrawal of abatement on services provided in relation to chit
- (v) Amendment in reverse charge mechanism,-
- To prescribe full reverse charge on manpower supply and security service provided by individual, HUF, partnership firm to a body Corporate
  - Prescribing reverse charge on service provided by a mutual fund agent, mutual fund distributor and agents of lottery distributor
- (vi) Amendment in rule 4(7) of the Cenvat Credit Rules to allow credit of service tax paid by recipient of service in partial reverse charge immediately on payment of tax

**Changes in the Finance Act, 1994 that would get incorporated on**

**enactment of the Finance Bill 2015**

- (i) Insertion of new definition to specify the term “government” [section 65 B (26A)]
- (ii) Insertion of a new Explanation in the definition of service [section 65 B(44)]
- (iii) Insertion of an illustration in sub-section (1) of section 66F(1) to explain the scope of this subsection
- (iv) Amendment in the definition of the terms “consideration” in section 67
- (v) Amendments in sections 73, 76 and 78.
- (vi) Insertion of transition provision by way of section 78B
- (vii) Omitting section 80
- (viii) Amendments in section 86
- (ix) Amendments in the provisions relating to Settlement Commission
- (x) Omitting of rule 6 (6A) of the Service Tax Rules

**With effect from a date to be notified after the enactment of the**

**Finance Bill, 2015 in respect of each provision**

Amendments in the Negative List (section 66D) and definitions (section 65B), namely,-

- (i) Omitting the definitions of the terms “amusement facility”[section 65 B (9)], “entertainment event” [section 65 B(24)], and entry (j) in section 66D
- (ii) Amendments in the definition of terms “process amounting to manufacture or production of goods” [section 65 B (40)] and entry (f) in section

66D

(iii) Omitting the definition of the terms “support service”[section 65 B (49)], and amendment in section 66D(a) (iv)

Amendment in S. No. 30 of notification No. 25/12-ST to exclude job work in relation to alcoholic liquor for human consumption from the scope of this exemption

6.6 Insertion of a new entry at S. No. 47 of notification No. 25/12- ST to exempt services by way of (i) right to admission to exhibition of film, circus, dance or theatrical performances including drama, or ballet;

(ii) recognized sporting event; and

(iii) admission to other events where the consideration for admission is upto Rs. 500;

8.1 Amendments in alternative rates of service tax provided for air travel agent, insurance service, money changing service and service provided by a lottery distributor and selling agent in rule 6(7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules.

## **15. General**

15.1 Changes explained above are not intended to be exhaustive and are meant only to draw attention to major changes. The text of the statutory provisions and the wordings of the notifications should be read carefully for interpreting the law.

15.2 Field formations are requested to go through the changes made in the Budget carefully. Any issues or doubts which may arise or any omission/error



observed may kindly be brought to the notice of the undersigned, or Dr. Abhishek Chandra Gupta, Technical Officer at abhishek.gupta81@nic.in as soon as possible. I would like to express my appreciation of the pre-budget suggestions and inputs received from field formations. I would also thank the officers in TRU who had worked as a cohesive team during the Budget exercise. A special word of thanks to Shri G. D. Lohani who, though promoted as Commissioner mid-way through the exercise, continued to work as a part of the team with unabated enthusiasm.

With regards,

Yours sincerely,

(M. Vinod Kumar)

**To:**

**All Chief Commissioners / Director Generals**

**All Principal Commissioners/Commissioners of Service Tax**



21 TRU – Budget - 2016

**F. No. 334/8/2016-TRU**

**Government of India**

**Ministry of Finance**

**Department of Revenue**

**(Tax Research Unit)**

\*\*\*

**Amitabh Kumar**

**Joint Secretary (Tax Research Unit) Tel: 011-23093027; Fax:**  
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**D.O.F. No.334/8/2016-TRU**

**New Delhi, dated February 29<sup>th</sup>, 2016**

**Dear Madam/Sir,**

**Subject: Union Budget 2016 - Changes relating to Service Tax  
- reg.**

The Finance Minister has, while presenting the Union Budget 2016-17, introduced the Finance Bill, 2016 in the Lok Sabha on the 29<sup>th</sup> of February, 2016. Clauses 145 to 157 of the Bill cover the amendments made to Chapter V of the Finance Act, 1994. Chapter VI of the Bill (clause 158) proposes to levy Krishi Kalyan Cess, on any or all the taxable services at the rate of 0.5% of the value of taxable services with effect from 1<sup>st</sup> June, 2016.

2.0 Changes are also proposed in,-  
the Service Tax Rules, 1994 (STR);

the Point of Taxation rules, 2011;

the CENVAT Credit Rules, 2004(Cenvat Rules);

These and other changes are being given effect to by inserting new entries, and amending/omitting existing entries in notification Nos. 25/2012-ST, 26/2012-ST, 30/2012-ST, 32/2012-ST, all dated 20-6-2012, 23/2004-CE(NT) dated 10.09.2004 and 27/2012-C.E. (N.T.) dated 18.06.2012 and by issuing new notifications.

2.1 It may be noted that changes being made in the Budget are coming into effect on various dates, as indicated below:

Changes coming into effect immediately w.e.f. the 1<sup>st</sup> day of March, 2016;

Changes coming into effect from the 1<sup>st</sup> day of April, 2016;

The amendments which will get incorporated in the Finance Act, 1994 on enactment of the Finance Bill, 2016;

The amendments made in the Finance Act, 1994, which will come into effect from 1<sup>st</sup> day of June, 2016 after the enactment of the Finance Bill, 2016; and

Chapter VI of the Finance Bill, 2016, regarding levy of Krishi Kalyan Cess on all taxable services will come into effect from 1<sup>st</sup> June 2016.

For ease of reference, the Table at Annexure-I lists the changes being made and indicates the dates on which these changes would come into effect.

**The salient features of the changes being made are discussed below.**

**Enabling provision for levy of “Krishi Kalyan Cess”:**

Krishi Kalyan Cess is proposed to be levied with effect from 1<sup>st</sup> June, 2016 on any or all the taxable services at the rate of 0.5% on the value of such taxable services. Credit of Krishi Kalyan Cess paid on input services shall be allowed to be used for payment of the proposed Cess on the service provided by a service provider.

(Chapter VI/Clause 158 of the Bill refers)

**4.0 Other Legislative changes:**

4.1 **Negative List** -The changes proposed in the Negative List in Section 66 D are as follows:

Presently, clause (l) of section 66D of the Act [Negative List] covers specified educational services. These services are proposed to be omitted from the Negative List but the service tax exemption on them is being continued by incorporating them in the general exemption notification (*Notification No. 25/2012-ST as amended by notification No. 09/2016-ST, dated 1<sup>st</sup> March, 2016 refers*). Consequently, the definition of „approved vocational education course“ [clause (11) of section 65B] is also proposed to be omitted from the Finance Act and is being incorporated in the general exemption notification (*Notification No. 25/2012-ST as amended by notification No. 09/2016ST, dated 1<sup>st</sup> March, 2016 refers*). This amendment in the notification shall come into effect from the date of enactment of Finance Bill, 2016.

The Negative List entry that covers “service of transportation of passengers, with or without accompanied belongings, by a stage carriage” is proposed to be omitted [section 66D (o)(i)] with effect from 1.06.2016. Clause 146 of Finance Bill 2016 may please be seen. As a consequence, the above services become taxable with effect from 1.06.2016. However, such services by a non-air-conditioned contract carriage will continue to be exempted by way of exemption notification [*Notification No. 25/2012-ST, as amended by notification No. 09/2016-ST, dated 1st March, 2016 refers*]. The service of transportation of passengers by air-conditioned stage carriage is being taxed at the same level of abatement (60%) as applicable to the transportation of passengers by a contract carriage, with same conditions of non-availment of Cenvat credit. [*notification No. 08/2016-St dated 29<sup>th</sup> February, 2016 refers*]

The entry in the Negative List that covers services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance [section 66D (p)(ii)] is proposed to be omitted with effect from 1.06.2016. Clause 146 of Finance Bill 2016 may please be seen in this regard. However such services by an aircraft will continue to be exempted by way of exemption notification [*Not. No. 25/2012-ST, as amended by notification No. 09/2016-ST dated 1<sup>st</sup> March, 2016 refers*]. The domestic shipping lines registered in India will pay service tax under forward charge while the services availed from foreign shipping line by a business entity located in India will get taxed under reverse

charge at the hands of the business entity. The service tax so paid will be available as credit with the Indian manufacturer or service provider availing such services (subject to fulfillment of the other existing conditions). It is clarified that service tax levied on such services shall not be part of value for custom duty purposes.

In addition, Cenvat credit of eligible inputs, capital goods and input services is being allowed for providing the service by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India. Consequential amendments are being made in Cenvat Credit Rules, 2004 [Not. No. 23/2004-CE (N.T.), as amended by Sl. Nos. 2(b) and 5(h) of notification No. 13/2016-C.E. (N.T.) dated refers. ]

(Clause 146 of the Bill refers)

#### **4.2 Further amendments in Chapter V of the Finance Act, 1994:**

##### **A. Lottery:**

Section 4(c) of the Lotteries (Regulation) Act, 1998 provides that the State Government shall sell the tickets either itself or through distributors or selling agents. Thus, as per the provisions of the Lotteries (Regulation) Act, 1998, the transaction between the State Government and the distributors or selling agents is on principal to agent basis. Any contract contrary to the aforesaid legal provisions is *ultra vires* the provisions of Indian Contracts Act, 1872 and thus not legally enforceable. *Explanation 2* in section 65B(44) is proposed to be amended to clarify that activity carried out by a lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998), is leviable to service tax."

(Clauses 145 of the Bill refers)

##### **B. Declared Services (Section 66E):**

Assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof is proposed to be declared as a service under section 66E of the Finance Act, 1994 so as to make it clear that assignment by Government of the right to use the spectrum as well as subsequent transfers of assignment of such right to use is a service leviable to service tax and not sale of intangible goods.

(Clauses 147 of the Bill refers)

### **C. Section 67A of Finance Act, 1994.**

Section 67A is proposed to be amended to obtain specific rule making powers in respect of Point of Taxation Rules, 2011. Point of Taxation Rules, 2011 is being amended accordingly. The amendment in the rules would come into force with effect from the date of enactment of the Finance Bill, 2016.

*(Clause 148 of Finance Bill, 2016 and Sl. No. 2(1) of notification No.*

*10/2016-ST refers)*

### **D. Amendment in section 73 of the Finance Act:**

The limitation period for recovery of service tax not levied or paid or short-levied or short paid or erroneously refunded, for cases not involving fraud, collusion, suppression etc. is proposed to be enhanced by one year, that is, from eighteen months to thirty months by making suitable changes to section 73 of the Finance Act, 1994.

*(Clauses 149 of the Finance Bill, 2016 refers)* **E. Amendment to section 75 of Finance Act**

Section 75 of the Finance Act is proposed to be amended so that a higher rate of interest would apply to a person who has collected the amount of service tax from the service recipient but not deposited the same with the Central Government.

*(Clause 150 of Finance Bill 2016 refers)*

### **F. Amendment in section 78A of the Finance Act, 1994**

It is proposed to provide that penalty proceedings under section 78A shall be deemed to be closed in cases where the main demand and penalty proceedings have been closed under section 76 or section 78, by making suitable changes to section 78A by addition of an explanation.

*(Clause 151 of Finance Bill 2016 refers)*

### **G. Section 89 of the Finance Act, 1994**

The monetary limit for filing complaints for punishable offences is proposed to be enhanced to Rs. 2 crore.

(Clause 152 of Finance Bill 2016 refers)

#### **H. Sections 90 and 91 of the Finance Act, 1994**

The power to arrest in service tax law is proposed to be restricted only to situations where the tax payer has collected the tax but not deposited it with the exchequer, and amount of such tax collected but not paid is above the threshold of Rs 2 crore. Sections 90 and 91 of the Finance Act, 1994 are being amended accordingly.

(Clauses 153 and 154 of Finance Bill 2016 refers)

#### **I. Section 93A: Power to grant rebate.**

Section 93A of the Finance Act, 1994 is being amended so as to enable allowing of rebate by way of notification as well as rules.

(Clause 155 of the Bill refers)

#### **J. Retrospective effect to notification No. 01/2016- ST**

Notification No. 41/2012- ST, dated the 29th June, 2012 was amended vide notification No.1/2016-ST dated 3rd February, 2016 so as to, *inter alia*, allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods. The said amendment is being given retrospective effect from the date of application of the parent notification, i.e., from 01.07.2012. Time period of one month is proposed to be allowed to the exporters whose claims of refund were earlier rejected in absence of amendment carried out vide notification No.1/2016-ST dated 3rd February, 2016.

(Clauses 157 of the Bill refers)

#### **K. Service Tax exemption to canal, dam or other irrigation works with retrospective effect:**

Definition of Governmental authority was amended with effect from 30.01.2014 so as to exempt services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature. However, services provided prior to 30.01.2014 to such bodies remained taxable. The benefit of exemption is proposed to be extended to the said services provided during the period from the 1<sup>st</sup> July, 2012 to 29.01.2014.

Refund of Service Tax paid on the said services during the period from the 1st July, 2012 to 29.01.2014 shall also be allowed in



accordance with the law including the law of unjust enrichment. Application for refund may be allowed to be filed within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

[New section 101 is being inserted in the Finance Act, 1994] (Clauses 156 of the Finance Bill, 2016 refers)

**L. Restoration of certain exemptions withdrawn last year for projects, contracts in respect of which were entered into before withdrawal of the exemption.**

(a) Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of -

a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

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; was withdrawn with effect from 1.4.2015. The same is being restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The exemption is being restored till 31.03.2020. [Notification No. 25/2012-ST as amended by notification No. 09/2016-ST dated 1<sup>st</sup> March, 2016 refers] The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from service tax.

[New section 102 is being inserted in the Finance Act, 1994] (Clauses 156 of the Bill refers)

(b) Exemption from Service Tax on services by way of construction, erection, etc. of original works pertaining to an airport, port was withdrawn with effect from 1.4.2015. The same is being restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date subject to production of

certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, that the contract had been entered into prior to 01.03.2015. The exemption is being restored till 31.03.2020.

*[Notification No. 25/2012-ST as amended by notification No. 09/2016ST dated 1<sup>st</sup> March, 2016 refers].* The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from service tax.

[New section 103 is being inserted in the Finance Act, 1994]  
(Clauses 156 of the Bill refers)

The above changes in the Finance Act, 1994 shall come into force on the day the Finance Bill, 2016 is enacted.

## **5.0 Information Technology Software:**

5.1 With effect from 21.12.2010, media falling under Chapter 85 with recorded

Information Technology Software has been notified under section 4A of the Central Excise Act. Accordingly, Central Excise duty/CVD is to be paid on the value of such media with recorded Information Technology Software and the assessable value of such media is required to be determined on the basis of the retail sale price (RSP) affixed on the package of such media under the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder. In respect of transactions involving supply of such media bearing RSP, not amounting to sale/deemed sale, service tax is being exempted. Thus, only Central Excise duty is levied on such transactions. (*Notification No. 11/2016-CE dated 1<sup>st</sup> March 2016 refers*)

5.2 In certain situations like delivering customised software on media, such media with recorded Information Technology Software, is not required to bear the RSP when supplied domestically or imported. Difficulties are being experienced in the assessment of such media to Central Excise duty/CVD besides giving rise to the issue of double taxation – levy of Central Excise duty/CVD as well as service tax. In order to resolve the issue, media with recorded Information Technology Software which is not required to bear RSP, is being exempted from so much of the Central Excise duty/CVD as is equivalent to the duty payable on the portion of the value of such

Information Technology Software recorded on the said media, which is leviable to service tax. In such cases, manufacturer/importer would therefore be required to pay Central Excise duty/CVD only on that portion of value representing the value of the medium on which it is recorded along with freight and insurance. The exemption is subject to the fulfillment of certain conditions. Thus, the levy of Central Excise duty/CVD and service tax will be mutually exclusive.

*(Notification No. 11/2016-CE and 11/2016-Customs, both dated 1<sup>st</sup> March 2016 refers)*

## **6.0 Review of Exemptions:**

6.1 Exemption in respect of the following services is being withdrawn,-

Services provided by a senior advocate to an advocate or partnership firm of advocates, and

A person represented on an arbitral tribunal to an arbitral tribunal;

Service tax in the above instances would be levied under forward charge. However, the existing dispensation regarding legal services provided by a firm of advocates or an advocate other than senior advocate is being continued.

*(Sl. No. (i) of Notification No. 9/2016-ST, dated 1st March, 2016 refers).*

Exemption under Sl. No. 23 (c) of the notification No.25/2012-ST on transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway is being withdrawn.

*( Sl. No (ix) B of notification No. 9/2016-ST, dated 1st March, 2016 refers).*

Exemption to construction, erection, commissioning or installation of original works pertaining to monorail or metro (under S. No 14 of the notification No. 25/12-ST) is being withdrawn, in respect of contracts entered into on or after 1<sup>st</sup> March 2016. The other exemptions under S. No. 14 of notification No. 25/12-ST shall continue unchanged.

*( Sl. No(vi)A of notification No. 9/2016-ST, dated 1st March, 2016 refers).*

The above changes in notification No. 25/12-ST, except the change mentioned in para 6.3, shall come into effect from the 1<sup>st</sup> day of April

2016. The change mentioned in para 6.3 will come into effect from 1<sup>st</sup> March, 2016.

**New Exemptions:**

The services of life insurance business provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India is being exempted from service tax.

(New entry at S. No. 26C of notification No. 25/2012-ST *refers*)

Services provided by Securities and Exchange Board of India (SEBI) set up under SEBI Act, 1992, by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market are being exempted from service tax.

(New entry at S. No. 51 of notification No. 25/2012-ST *refers*)

Services provided by Employees' Provident Fund Organisation (EPFO) to employees are being exempted from service tax.

(New entry at S. No. 49 of notification No. 25/2012-ST *refers*)

Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubatees are being exempted from service tax.

(Amendment in notification No. 32/2012-ST *refers*)

7.5 Services provided by National Centre for Cold Chain Development under

Department of Agriculture, Cooperation and Farmer's Welfare, Government of India, by way of knowledge dissemination are being exempted from service tax.

(New entry at S. No. 52 of notification No. 25/2012-ST *refers*)

7.6 Services provided by Insurance Regulatory and Development Authority (IRDA) of India are being exempted from service tax.

(New entry at S. No. 50 of notification No. 25/2012-ST *refers*)

7.7 Services of general insurance business provided under „Niramaya“ Health Insurance scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability in collaboration with private/public insurance companies are being exempted from service tax.

(New entry at S. No. 26(q) of notification No. 25/2012-ST *refers*)

7.8 The threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art forms of music, dance or theatre, is being increased from Rs 1 lakh to Rs 1.5 lakh per performance.

( Notification No.09/2016-ST, dated 1<sup>st</sup> March 2016 *refers*)

7.9 Services provided by way of skill/vocational training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners are being exempted from service tax.

(New entry at S. No. 9D of notification No. 25/2012-ST *refers*)

7.10 Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship are being exempted from service tax.

(New entry at S. No. 9C of notification No. 25/2012-ST *refers*)

7.11 Services by way of construction, erection etc. of a civil structure or any other original works pertaining to the “In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation” component of Housing for All (HFA) (Urban) Mission / Pradhan Mantri Awas Yojana (PMAY), except in respect of such dwelling units of the projects which are not constructed for existing slum dwellers, is being exempted from service tax.

(New entry at S. No. 13 (ba) of notification No. 25/2012-ST *refers*)

7.12 Services by way of construction, erection etc., of a civil structure or any other original works pertaining to the "Beneficiary-led individual house construction / enhancement" component of Housing for All (HFA) (Urban) Mission/ Pradhan Mantri Awas Yojana (PMAY) is being exempted from service tax.

(New entry at S. No. 13 (bb) of notification No. 25/2012-ST refers)

7.13 Services by way of construction, erection, etc., of original works pertaining to low cost houses up to a carpet area of 60 sq.m per house in a housing project approved by the competent authority under the "Affordable housing in partnership" component of PMAY or any housing scheme of a State Government are being exempted from service tax.

(new entry at S. No. 14 (ca) of notification No. 25/2012-ST refers)

7.14 Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Management(PGPM) (other than executive development programme), admissions to which are made through Common Admission Test conducted by IIMs, 5 year Integrated Programme in Management and Fellowship Programme in Management are being exempted from service tax.

7.15 It has been informed by Secretary, Ministry of Human Resource Development (MHRD) vide letter D. O. No.2-14/2009-TS.V dated 8<sup>th</sup> July,

2014 and 5<sup>th</sup> February, 2014 that MHRD is vested with the power to recognise educational courses [DoPT O.M. dated 08.01.1975], for the purpose of recruitment to posts under Government of India. It has been further stated by MHRD in their above mentioned letters that IIMs have been conducting Post Graduate Programmes in Management and Fellowship Programmes which are equivalent to MBA and Ph.D degrees. It has been reiterated by Secretary, MHRD vide letter D.O. 3/5/2013-TS.V dated 15.1.2016 that the IIMs have been conducting Post Graduate Programmes in Management and Fellowship Programmes which are equivalent to MBA and Ph.D degrees, respectively, (as also clarified by associations like Association of Indian Universities, Inter –University Board of India etc.). In view of this, the exemption being given to the above

programmes of IIMs is clarificatory in nature and in view of the same, liability to pay service tax in respect of the said programmes for the past period will also become infructuous.

(New entry at S. No. 9B of notification No. 25/2012-ST refers)

The above changes in notification No. 25/12-ST, except the change mentioned in para 7.11, 7.12, 7.13 and 7.14 (which will come into effect from 1<sup>st</sup> March, 2016), shall come into effect from the 1<sup>st</sup> day of April 2016.

**New entries being incorporated in notification No. 25/2012-ST, to continue exemption to certain activities that are presently covered by the Negative List entries which are being omitted:**

8.1 Services by way of transportation of goods by an aircraft from a place outside India up to the customs station of clearance in India were in negative list of services [clause (p)(ii) of section 66D]. As this entry is proposed to be omitted through the Finance Bill 2016[para 4.1(C) above refers], the said service is being exempted by amending notification No.25/2012-ST.

(New entry at S. No 53 of notification No. 25/2012-ST refers)

8.2 Services by a stage carriage were in the negative list of services [clause (o) (i) of section 66D]. As this entry is proposed to be omitted through the

Finance Bill 2016 [para 4.2 above refers], a new entry is being inserted in notification No.25/2012-ST so as to exempt services by a stage carriage other than air conditioned stage carriage

(New entry at S. No. 23(bb) of notification No. 25/2012-ST refers)  
These changes shall be made effective from 1<sup>st</sup> of June, 2016.

**Abatements:**

In cases where the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour, abatement of 90% is available with specified conditions. However, this abatement of 90% cannot be claimed 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. There is no change in the rate of abatement or the conditions required to be fulfilled for claiming the said abatement. *(Entry at S. No. 11(i) of notification No. 26/2012-ST as amended vide notification No. 8/2016-ST dated 1.03.2016 refers)*

Abatement rates in respect of services by a tour operator in relation to a tour other than in para 9.1 above, is being rationalised from 75% and 60% to

70%. Consequently, the definition of "package tour" as provided in the relevant notification is being omitted.

*(Amendment in entry at S. No. 11 of notification No. 26/2012-ST refers)*

9.3 Services provided by foreman to a chit fund under the Chit Funds Act, 1982 are proposed to be taxed at an abated value of 70% [i.e., with abatement of 30%], subject to the condition that Cenvat credit of inputs, input services and capital goods has not been availed.

*(Amendment in entry at S. No. 8 of notification No. 26/2012-ST refers)*

9.4 At present, there is abatement of 60% on the gross value of renting of motor-cab services, provided no cenvat credit has been taken. It is being made clear by way of inserting an explanation in the notification No. 26/2012-ST that cost of fuel should be included in the consideration charged for providing renting of motor-cab services for availing the abatement.

*(Insertion of Explanation 'BA' in notification No. 26/2012-ST refers)*

9.5 At present, two rates of abatement have been prescribed for services of construction of complex, building, civil structure, or a part thereof,- (a) 75% of the amount charged in case of a residential unit having carpet area of less than 2000 square feet and costing less than Rs 1 crore, and (b) 70% of the amount charged in case of other than (a) above, both subject to fulfilment of certain conditions



prescribed therein. A uniform abatement at the rate of 70% is now being prescribed for services of construction of complex, building, civil structure, or a part thereof, subject to fulfilment of the existing conditions.

(Amendment in entry at S. No. 12 of notification No. 26/2012-ST refers)

9.6 At present, service tax is leviable on 30% of the amount charged for the service of transport of passengers by rail, without cenvat credit of inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of the said services. It is proposed to continue with the same level of abatement with cenvat credit of input services for the said service.

(Amendment in entry at S. No. 3 of notification No. 26/2012-ST refers)

9.7 At present, service tax is payable on 30% of the value of service of transport of goods by rail without cenvat credit on inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of the said service. It is now proposed to continue with the same level of abatement with cenvat credit of input services for transport of goods by rail (other than "transport of goods in containers by rail by any person other than Indian Railway"). A reduced abatement rate of 60% with credit of input services is being prescribed for transport of goods in containers by rail by any person other than Indian Railway.

*(Existing entry at S.No. 2 and new entry at S. No. 2A of notification No.*

*26/2012-ST refers)*

9.8 At present, service tax is leviable on 30% of the value of service of transport of goods by vessel without Cenvat credit on inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of

the said service. It is now proposed to continue with the same level of abatement with cenvat credit of input services for the said service.

(Amendment in entry at S. No. 10 of notification No. 26/2012-ST refers)

9.9 Abatement on transport of used household goods by a Goods Transport Agency (GTA) is being rationalised at the rate of 60% without availment of cenvat credit on inputs, input services and capital goods by the service provider (as against abatement of 70% allowed on transport of other goods by GTA).

(New entry at S. No. 7A in notification No. 26/2012-ST refers)

The proposed rationalization in abatements shall come into effect from the 1<sup>st</sup> day of April, 2016.

### **Reverse Charge Mechanism**

In Union Budget, 2015, as a policy decision to prune exemptions, the exemption to services provided by mutual fund agents/distributors to an asset management company was withdrawn. However these services were put under reverse charge liability, i.e., the Asset Management Company was made liable to pay service tax for the services received from such agents/distributors. Services provided by mutual fund agents/distributor to a mutual fund or asset management company are being put under forward charge, i.e. the service provider is being made liable to pay service tax. The small sub-agents down the distribution chain will still be eligible for small service provider exemption [threshold turnover of Rs 10 lakh/year] and a very small number will be liable to pay service tax. Accordingly, Rule 2(1)(d)(EEA) of Service Tax Rules, 1994 making service recipient, that is, mutual fund or Asset Management Company as the person liable for paying service tax is being deleted along with consequential changes in notification No. 30/2012-ST.

10.2 The liability to pay service tax on any service provided by Government or a local authority to business entities shall be on the service recipient.

Consequently, notification No. 30/2012-ST is being amended so as to delete the words „by way of support services“ appearing at Sl. No. 6 of the Table in the said notification with effect from 1<sup>st</sup> April, 2016. Further,

1<sup>st</sup> April, 2016 is being notified as the date from which the words „*by way of support services*“ shall stand deleted from paragraph 1, clause A (iv), item (C) of notification No. 30/2012-ST.

The above changes shall come into effect from the 1<sup>st</sup> day of April 2016.

### **Service Tax Rules**

The concept of One Person Company (OPC) in India was introduced through the Companies Act, 2013 to support entrepreneurs who on their own are capable of starting a venture by allowing them to create a single person economic entity with limited liability. One person Company has been defined in Section 2(62) of the Companies Act, 2013. The benefits of (a) quarterly payment of service tax and (b) payment of service tax on receipt basis, which are available to individual and partnership firms, are being extended to One Person Company (OPC) whose aggregate value of services provided is up to Rs. 50 lakh in the previous financial year. Further, the benefit of quarterly payment of service tax is also being extended to HUF. Rule 6 of the Service tax Rules, 1994, which deals with the payment of service tax and prescribes relaxation for individual or proprietary firm or partnership firm, is being amended accordingly.

Rule 2(1)(d)(i) (D)(II) is being modified so that legal services provided by a senior advocate shall be on forward charge.

(Notification No. 19/2016-ST dated 1.03.2016 refers)

11.3 The service tax liability on single premium annuity (insurance) policies is being rationalised and the effective alternate service tax rate (composition rate) is being prescribed at 1.4% of the total premium charged, in cases where the amount allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service. Amendments are being made in rule 7A of Service Tax Rules, 1994 accordingly.

11.4 At present, support services provided by Government or local authorities to business entities are taxable under reverse charge mechanism that is the liability to pay service tax on such services is on the service recipient. With effect from 1st April, 2016, any service (and not only support services) provided by Government or local authorities to business entities shall be taxable. Consequently, 1<sup>st</sup> April, 2016 is being notified as the date from which the word “support” shall stand deleted from rule 2(1)(d)(i) (E) of Service Tax Rules, 1994 so as to provide that the liability to pay service tax on any service provided by Government or local authorities to business entities shall also be on the service recipient on reverse charge basis.

11.5 Recipient of services availed from foreign shipping line by a business entity located in India will get taxed under reverse charge at the hands of the business entity. (No fresh provision is being made in this regard, as it is already covered by Place of Provision of Service Rules.)

#### **11.6 Technical amendment to rule 6 (4)**

Rule 6(4) is being amended so as to substitute the reference to the Central

Excise (No. 2) Rules, 2001, with a reference to the Central Excise Rules, 2002.

The above changes, except the changes mentioned in para 11.5 (which will come into effect from 1<sup>st</sup> June, 2016), shall come into effect from the 1<sup>st</sup> day of April 2016.

#### **The Point of Taxation Rules (POTR).**

The Point of Taxation Rules, 2011 have been framed under provisions of clause (a) and (hhh) of sub-section (1) of section 94, now specific powers is also being obtained under section 67A to make rules regarding point in time of rate of service tax. Thus, any doubt about the applicability of service tax rate or apparent contradiction between section 67A and POTR would be taken care of. Therefore, consequent modifications have been done in POTR.

Rule 5 of POTR applies when a new service comes into the service tax net. Although in the case of new levy, provisions of Chapter V of the Finance Act, 1994, and rules made thereunder, are invariably made applicable in relation to the levy and collection of the new levy. However, doubts have been raised regarding its applicability in case of new levy. Therefore, an *Explanation* is being inserted in Rule 5 stating that the same is applicable in case of new levy on services.

Further, in rule 5 of POTR, it is provided that in two specified situations the new levy would not apply. Another *Explanation* is being inserted therein stating that in situations other than those specified where new levy or tax is not payable, the new levy or tax shall be payable.

The above changes shall come into effect from 1<sup>st</sup> March, 2016.

### **Cenvat Credit Rules, 2004**

With a view to simplify and rationalize the Cenvat Credit Rules, 2004, a number of amendments are being carried out in them. The important changes have been discussed in brief in Annexure-II.

#### **Rationalisation**

Interest rates on delayed payment of duty/tax across all indirect taxes is proposed to be made uniform at 15%, except in case of service tax collected but not deposited with the Central Government, in which case the rate of interest will be 24% from the date on which the service tax payment became due. Notifications under section 73B and section 75 of the Finance Act, 1994 are being issued accordingly.

(Notification Nos. 13 and 14/2016-ST dated 1<sup>st</sup> March, 2016 refer)

In case of assesseees, whose value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakh, the rate of interest on delayed payment of service tax will be 12%.

(Notification Nos. 13 and 14/2016-ST dated 1<sup>st</sup> March, 2016 refer)

#### **Certain issues clarified:**

##### **Incentives received by air travel agents from computer reservation system companies (CCRS)**

High Level Committee (HLC) in their Second Half Yearly Report in December 2015 have stated that Air Travel Agents (ATA) reportedly have been representing to CBEC since 2012 for a clarification about levy of service tax on the incentives received by them from the Companies providing Computer Reservation System (CCRS) like Galileo, Amadeus, etc. The CCRS do not charge any amount for providing access to their internet system for booking of air tickets by the ATAs. Rather, the CCRS are providing certain incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system.

It is clarified that incentives received by the Air Travel Agents (ATAs) from the Companies providing Computer Reservation System (CCRS) are for using the software and platform provided by the CCRS like Galileo, Amadeus, etc. The CCRS are providing these incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system. Thus, the service provided by CCRS is to the Airlines and Air Travel Agent is promoting the service provided by CCRS to Airlines. Thus, the service provided by the ATAs to CCRS is neither covered in the negative list (Section 66D of the Finance Act, 1994) nor exempt by a notification. Therefore, service tax is leviable on the same.

### **Services provided by government or local authorities to business**

#### **entities;**

Finance Act, 1994 was amended vide Finance Act, 2015 so as to make any service (and not only support services) provided by Government or local authorities to business entities taxable from a date to be notified later. 1st April, 2016 has already been notified as the date from which any service provided by Government or local authorities to business entities shall be taxable. Consequently, 1<sup>st</sup> April, 2016 is also being notified as the date from which the definition of support services shall stand deleted from the Finance Act, 1994

*[notification No. 15/2016-ST dated refers].*

### **Services provided by Container Train Operators (CTOs)**

As discussed above, notification No. 26/2012-ST is being amended to provide that transport of goods by rail (other than transport of goods in containers by any person other than Indian Railway) shall be eligible for abatement at the rate of 70% with credit of input services. Transport of goods in containers by any person other than Indian Railway shall be eligible for abatement at the rate of 60% with credit of input services.

It is hereby also clarified that service provided by the Indian Railways to Container Train Operators (CTOs) of haulage of their container train (rake of wagons with containers) is a service of „Transport of Goods by Rail“ and is, therefore, eligible for abatement and tax treatment accordingly, that is, for abatement at the rate of 70% with credit of input services.

### **Refund of CENVAT Credit**

Notification No. 27/2012 – C.E. (N.T.) is being amended so as to provide that time limit for filing application for refund of Cenvat Credit under Rule 5 of the Cenvat Credit Rules, 2004, in case of export of services, shall be 1 year from the date of –

(a) receipt of payment in convertible foreign exchange, where provision of service has been completed prior to receipt of such payment; or (b) the date of issue of invoice, where payment for the service has been received in advance prior to the date of issue of the invoice.

*[Notification No. 14/2016-CE(NT) dated 01.03.2016 refers].*

### **Indirect tax Dispute Resolution Scheme, 2016**

Indirect tax Dispute Resolution Scheme, 2016, wherein a scheme in respect of cases pending before Commissioner (Appeals), the assessee, after paying the duty, interest and penalty equivalent to 25% of duty, can file a declaration, is being introduced. In such cases the proceedings against the assessee will be closed and he will also get immunity from prosecution. However, this scheme will not apply in certain specified type of cases.

### **Returns.**

Service tax assessee above a certain threshold will also be required to file an annual return. This change shall come into effect from 1<sup>st</sup> April, 2016.

### **Services provided by institutes of language management (ILMs)**

15.7.1 High Level Committee (HLC) on Tax Laws in its II<sup>nd</sup> Half Yearly Report has observed that Institutes of Language Management (ILMs) are engaged by various schools/institutions to develop knowledge and language skills of students. Since the ILMs are providing coaching/teaching to the students in a school or college, as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force it should be clarified that the services provided by ILMs are not liable to service tax.

7.2 The matter has been examined. The services provided by the ILMs are not covered by Section 66D (I) of the Finance Act, 1994 or Entry 9 of Notification No. 25/2012 - ST as they are not providing pre-school education or education up to higher secondary school (or equivalent) or education for obtaining a qualification recognized by law. It is the schools/colleges/institutions (in which the students take admissions) which provide such education. The ILMs provides services to such educational institutions, which helps such educational institutions in providing services specified in the negative list. Thus, it is clarified that services provided by

the Institutes of Language Management (ILMs) are not eligible for exemption under Section 66D (I) of the Finance Act, 1994 or under Sl. No.

9 of Notification No. 25/2012-ST.

### **General**

Changes explained above are not intended to be exhaustive and are meant only to draw attention to major changes. The text of the statutory provisions and the wordings of the notifications should be read carefully for interpreting the law.



Field formations are requested to go through the changes made in the Budget carefully. Any issues or doubts which may arise or any omission/error observed may kindly be brought to the notice of the undersigned or Shri Ram Tirath, Member(Budget), Phone No. 01123094788, Dr. Somesh Chander, Director at [somesh.chander@nic.in](mailto:somesh.chander@nic.in), Ph.

011-23095522, or Shri Pramod Kumar, OSD (TRU) at [pramodkumar.dor@nic.in](mailto:pramodkumar.dor@nic.in), Ph. 011-23092274, as soon as possible.

Despite best efforts it is but human to make some errors and omissions in the drafting of various provisions. I shall be extremely thankful if you could either inform me or my colleagues of such inadvertent errors as soon as possible. You may also inform about any operational, administrative or any other difficulty faced or anticipated in the implementation of the new proposals either by the trade or by the field formations.

I would like to express my gratitude for the pre-budget suggestions and inputs which have been received from field formations. I would like to say a special thank you to the Director and Officer on Special Duty who have very diligently carried through the budgetary process. I would be found wanting if I do not thank the three Technical Officers, Dr Abhishek Chandra Gupta, Dr. Ravinder Kumar and Shri Abhishek Verma, who put in their best.

With regards,

Yours sincerely,

(Amitabh Kumar) **To:**

**All Chief Commissioners / Director Generals**

**All Principal Commissioners/Commissioners of Service Tax**

**All Principal Commissioners/Commissioners of Central Excise**

**ANNEXURE-I**

**LIST OF CHANGES BEING MADE AND THE DATES ON WHICH  
THEY WOULD COME INTO EFFECT.**

<b>SUBJECT</b>	<b>Para</b>
<b>A. With immediate effect (from 01.03.2016)</b>	

Restoration of exemption on services provided to the Government, a local authority or a governmental authority.	4.2L(a)
Restoration of exemption on services to an airport, port.	
Withdrawal of exemption on services to monorail or metro, in respect of contracts entered into on or before 01.03.2016	4.2L(b)
Exemption to services by way of construction etc. in respect of-	
housing projects under Housing For All (HFA) (Urban) Mission/Pradhan Mantri Awas Yojana (PMAY);	6.3
low cost houses up to a carpet area of 60 square metres in a housing project under "Affordable housing in Partnership" component of PMAY,	7.11 to
low cost houses up to a carpet area of 60 square metres in a housing project under any housing scheme of the State Government,	7.13
Exemption to specified services provided by the Indian Institutes of Management (IIM).	
Notification to ensure that Information Technology Software is subjected to either central excise duty or service tax. To deal with assessment of media with recorded Information Technology Software, where RSP is affixed or assessment when RSP is not required.	
Insertion of <i>Explanations</i> in Rule 5 of Point of Taxation Rules, 2011	
Cenvat credit is being allowed to service providers providing services by way of transportation of goods by a vessel from India to abroad.	
Notification No. 27/2012 – C.E. (N.T.) is amended to specify relevant date.	7.14
Service provided by Container Train Operators	5.0
	12

	13(d)& 13(i)(iii)
	15.4
	15.3
<b>B. With effect from 1<sup>st</sup> day of April, 2016</b>	
□ Exemption on services by senior advocate to other advocate or to a law firm is being withdrawn. Levy under forward charge.	6.1

<p>□ A person represented on an arbitral tribunal to an arbitral tribunal;</p>	6.1
<p>□ Exemption being withdrawn from the services of transport of passengers, by ropeway, cable car or aerial tramway.</p>	6.2
<p>□ Date from which the definition of support services shall stand deleted from the Finance Act, 1994.</p>	
<p>□ New exemptions for services by,-</p>	
<p>    Annuity under the National Pension System</p>	15.2
<p>    Securities and Exchange Board of India (SEBI)</p>	
<p>    Employees“ Provident Fund Organisation (EPFO)</p>	
<p>    Biotechnology incubators approved by Biotechnology Industry Research Assistance Council (BIRAC).</p>	7.1 to
<p>    National Centre for Cold Chain Development</p>	7.10
<p>    Insurance Regulatory and Development Authority (IRDA) of India.</p>	
<p>    „Niramaya“ Health Insurance scheme implemented by National Trust</p>	
<p>    Threshold exemption to services provided by a performing artist in folk or classical art form is being increased from Rs 1 lakh charged per event to Rs 1.5 lakh charged per event.</p>	
<p>    Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners</p>	
<p>    Assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development &amp; Entrepreneurship.</p>	
<p>    Rationalisation of abatement rates and conditions thereof in respect of services by,-</p>	
<p>    Tour operator services</p>	
<p>    transport of passengers by rail.</p>	
<p>    transport of goods by rail.</p>	
<p>    shifting of used household goods by a GTA (v)      foreman to a chit fund.</p>	
<p>    renting of motor-cab services.</p>	
<p>    transport of goods by vessel.</p>	

9.1 to  
9.9

(viii) Construction of complex, building, civil structure, etc. □ Service tax Rules,-	
The benefit of (a) quarterly payment of service tax being extended to OPC and HUF and	11.1
(b) payment on receipt basis being extended to OPC.	
Rule 2(1)(d)(i) (D)(II) modified as an individual advocate other than senior advocate.	
The word "support" shall stand deleted from rule 2(1)(d)(i) (E)	11.2
Rule 2(1)(d)(EEA) making mutual fund agents/distributor as person liable for paying service tax will be deleted	
The service tax composition scheme for single premium annuity policies	11.4
□ Reverse charge mechanism	10.1
mutual fund agents/distributors to an asset management company under forward charge.	
service provided by Government or local authorities to business entities shall be on the service recipient. □ Cenvat Credit Rules, 2004 (Annexure – II )	11.3
Invoice issued by Service provider for removal of inputs and capital goods shall be a valid document	
To give option to banking company, a financial institution including non-banking financial company for Cenvat Credit reversal under sub-rule (1), (2) and (3) of the Rule 6 along with rule 6(3B) of the Cenvat Credit Rules, 2004.	10.1
Cenvat credit of service tax paid on upfront charges for assignment of spectrum/ mining rights etc.	10.2
Reversal of Cenvat Credit of inputs/input services which have been commonly used in a taxable output service as well as an activity which is not a „service“.	
Sub-rule (2) of rule 14 being omitted.	13

<b>Changes in the Finance Act, 1994 that get incorporated on enactment of the Finance Bill, 2016</b>	



	4.2 A
Explanation 2 in section 65B(44) is to be modified.	
Clause (I) of section 66D would be omitted and clause (11) of section 65B is to be omitted. [educational services]	4.1 (A)
Insertion of right to use the radio-frequency spectrum and subsequent transfers in section 66E as a <u>Declared Service</u> .	
Section 67A is being amended to obtain rule making powers	4.2B
Section 73 proposed to be amended to increase time limit from 18 months to thirty months.	
Insertion of proviso to section 75.	4.2C
Insertion of Explanation in section 78A	
Amendments in sections 89, 90 and 91.	4.2D
In section 93A of the 1994 Act, the words " <i>prescribed or by notification in the Official Gazette</i> " shall be substituted.	
Retrospective effect to notification No. 41/2012- ST, dated the 29th June, 2012 as amended by notification No. 01/2016- ST.	4.2E
Retrospective exemption is to be extended to the construction, repair, maintenance etc of canal, dam or other irrigation works provided to entities set up by Govt. provided during the period from the 1 <sup>st</sup> July, 2012 to 29.01.2014.	4.2 F
„Approved vocational education course“ is to be incorporated in the general exemption notification and exemption to specified educational services (Notification No. 25/2012-ST).	4.2G, 4.2H
Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority.	4.2I
Exemption from Service Tax on services by way of construction, erection, etc. of original works pertaining to an airport, port.	
Rationalisation of rate of interest in case where is service tax is collected	4.2J

4.2K

4.1(A)

4.2L (a)

4.2(L(b)

14

and not credited in Govt. account and others	
Dispute resolution scheme, 2016	
Returns	15.5
	15.6
<b>With effect from 1<sup>st</sup> day of June, 2016 after enactment of the Finance Bill, 2016 in respect of each provision</b>	
Krishi Kalyan Cess	3.0& 3.1
Negative List entry that covers "service of transportation of passengers, with or without accompanied belongings, by a stage carriage" is to be omitted [section 66D (o)(i)]	
Negative List that covers services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance is to be omitted [section 66D (p)(ii)]	4.1(B)
Exemption to transportation of passengers by a stage carriage other than air conditioned stage carriage is to be exempted	
Services by an aircraft will continue to be outside service tax net by way of exemption through notification	4.1(C)
	8.2
	8.1

## Annexure-II

### **Important changes in Cenvat Credit Rules, 2004 effective from 01.04.2016 [ Para 13 of the JS(DO) letter dated 1.03.2016]**

With a view to simplify and rationalize the Cenvat Credit Rules, 2004, a number of amendments are being carried out in them. Following are the important changes:

Wagons of sub heading 8606 92 of the Central excise Tariff and equipment and appliance used in an office located within a factory are being included in the definition of capital goods so as to allow cenvat credit on the same. *[Amendment in rule 2, clause (a) sub-clause (A) item (i) and condition No. (1) of the Rules refers].*

CENVAT credit on inputs and capital goods used for pumping of water, for captive use in the factory, is being allowed even where such capital goods are installed outside the factory. *[Amendment in rule 2 clause (a), sub-clause (A) condition (1A) and clause (k) sub-clause (ii) of the Rules refers].*

All capital goods having value up to Rs. ten thousand per piece are being included in the definition of inputs. This would allow an assessee to take whole credit on such capital goods in the same year in which they are received. *[Amendment in rule 2 clause (k) refers]*

Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of „exempted service“. This would allow shipping lines to take credit on inputs and input services used in providing the said service. *[Amendment in rule 2, clause (e) refers]*

Manufacturer of final products is being allowed to take CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer who manufactures the goods as per specification of manufacturer of final products. It is also being provided that a manufacturer can send these goods directly to such other manufacturer or job-worker without bringing the same to his premises. *[Amendment in Rule 4(5) (b) refers]*

Presently, the permission given by an Assistant Commissioner or Deputy Commissioner to a manufacturer of the final products for sending inputs or partially processed inputs outside his factory to a job-worker and clearance there from on payment of duty is valid for a financial year. It is being provided that the same would be valid for three financial years. *[Amendment in rule 4(6) refers]*.

It is being provided that CENVAT credit of Service Tax paid on amount charged for assignment by Government or any other person of a natural resource such as radio-frequency spectrum, mines etc. shall be spread over the period of time for which the rights have been assigned. It is also being provided that where the manufacturer of goods or provider of output service further assigns such right to use assigned to him by the Government or any other person, in any financial year, to another person against a consideration, balance CENVAT credit not exceeding the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year. It is also being provided that CENVAT credit of annual or monthly user charges payable in respect of such assignment shall be allowed in the same financial year. *[Amendment in rule 4, sub-rule (7) refers]*

Rule 6 of Cenvat Credit Rules, which provides for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.

sub rule (1) of rule 6 is being amended to first state the existing principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The rule then directs that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations.

sub-rule (2) of rule 6 is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e. reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used.

sub-rule (3) of rule 6 is being amended to provide that when a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely, exempted goods and final products excluding exempted goods or when a provider of output services provides two classes of services, namely exempted services and output services excluding exempted services, then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A).

The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.

Sub-rule (3A) is being amended to provide the procedure and conditions for calculation of credit allowed and credit not allowed and directs that such credit not allowed shall be paid, provisionally for each month. The four key steps for calculating the credit required to be paid are :-

No credit of inputs or input services used exclusively in manufacture of exempted goods or for provision of exempted services shall be available ;

Full credit of input or input services used exclusively in final products excluding exempted goods or output services excluding exempted services shall be available;

Credit left thereafter is common credit and shall be attributed towards exempted goods and exempted services by multiplying the common credit with the ratio of value of exempted goods manufactured or exempted services provided to the total turnover of exempted and nonexempted goods and exempted and non-exempted services in the previous financial year;

Final reconciliation and adjustments are provided for after close of financial year by 30<sup>th</sup> June of the succeeding financial year, as provided in the existing rule.

A new sub-rule (3AA) is being inserted to provide that a manufacturer or a provider of output service who has failed to follow the procedure of giving prior intimation, may be allowed by a Central Excise officer, competent to adjudicate such case, to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of fifteen *per cent.* per annum

A new sub-rule (3AB) is being inserted as transitional provision to provide that the existing rule 6 of CCR would continue to be in operation upto 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.

Sub-rule (3B) of rule 6 is being amended so as to allow banks and other financial institutions to reverse credit in respect of exempted services on actual basis in addition to the option of 50% reversal.

Following are the other changes being made in rule 6 of the Cenvat Credit Rules:

(i) Explanations 3 and 4 are being inserted in rule 6, sub-rule (1) so as provide for reversal of CENVAT Credit on inputs/input services which have been commonly used in providing taxable output service and an activity which is not a „service“ under the Finance Act, 1994.

Sub-rule (4) is being amended to provide that where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no CENVAT credit shall be allowed on such capital goods. Similar provision is being made for capital goods installed after the date of commencement of commercial production or provision of service.

Sub-rule (7) is being amended so as to provide that credit taken on inputs and input services used in providing a service by way of

“transportation of goods by a vessel from customs station of clearance in India to a place outside India” shall not be required to be reversed by the shipping lines. It may be mentioned here that this service presently qualifies as an “exempted service” on account of Rule 10 of Place of Provision of Supply Rules. Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of „exempted service“ by amending rule 2(e) of the rules as discussed above. Amendment in sub-rule (7) coupled with the corresponding amendment in the definition of Exempted Service is aimed at allowing credit of eligible inputs, input services and capital goods for providing the said service and providing Indian shipping lines a level playing field vis a vis the foreign shipping lines. The credit available may be used by Indian shipping lines to pay service tax on the services of transportation of goods by a vessel from outside India to the customs station of clearance in India, which would become taxable w.e.f 1<sup>st</sup> June 2016 after enactment of Finance Bill 2016.

Rule 7 of the Rules dealing with distribution of credit on input services by an Input Service Distributor is being completely rewritten to allow



an Input Service Distributor to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units. Outsourced manufacturing unit is being defined to mean either a job-worker who is required to pay duty on the value determined under the provisions of rule 10A of the Central Excise Valuation (Determination of Price Of Excisable Goods) Rules, 2000, on the goods manufactured for the Input Service Distributor or a manufacturer who manufactures goods, for the Input Service Distributor under a contract, bearing the brand name of the Input Service Distributor and is required to pay duty on value determined under the provisions of section 4A of the Central Excise Act, 1944. (Amendment in rule 2 (m) and rule 7 refers)

Presently, rule 7 provides that credit of service tax attributable to service used by more than one unit shall be distributed pro rata, based on turnover, to all the units. It is now being provided that an Input Service Distributor shall distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, *inter alia*, the following conditions, ,:

credit attributable to a particular unit shall be attributed to that unit only.

credit attributable to more than one unit but not all shall be to attributed to those units only and not to all units.

credit attributable to all units shall be attributed to all the units.

Credit shall be distributed pro rata on the basis of turnover as is done in the present rules.

It is also being provided that an outsourced manufacturing unit shall maintain separate account of credit received from each of the input service distributors and shall use it for payment of duty on goods manufactured for Input Service Distributor concerned. The credit of service tax paid on input services, available with the Input Service Distributor as on 31<sup>st</sup> of March, 2016 shall not be distributed to an outsourced manufacturing unit. Further, provisions of rule 6 of Cenvat Credit Rules, 2004 relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall apply to the units availing the CENVAT credit distributed by Input Service Distributor and not to the Input Service Distributor.

Rule 7B is being inserted in Cenvat Credit Rules, 2004 so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. It is also being provided that a manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs. Procedure applicable to a first stage dealer or a second stage dealer would apply, *mutatis mutandis*, to such a warehouse of the manufacturer.

Presently, an invoice issued by a manufacturer for clearance of inputs or capitals goods is a valid document for availing CENVAT credit. It is being provided that an invoice issued by a service provider for clearance of inputs or capitals goods shall also be a valid document for availing CENVAT credit. [*Amendment in Rule 9 (a) (i) refers.*]

Rule 9A of the Rules is being amended to provide for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the 30th day of November of the succeeding year in the form as specified by a notification by the Board.

The existing sub- rule (2) of rule 14 prescribes a procedure based on FIFO method for determining whether a particular credit has been utilized. The said subrule is being omitted. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.

# **22. An Education Guide**

**June 20, 2012**

**TAX RESEARCH UNIT  
Central Board of Excise & Customs,  
Department of Revenue, Ministry of Finance  
Government of India  
New Delhi**

## Preface

I write this on behalf of a number of persons collectively addressed as “We”: the Team TRU, other officials of the Department as well as elsewhere, academicians, innumerable taxpayers, tax advisors, business entities and representatives from the chambers of trade and industry and professional institutes.

The comprehensive taxation of services, that appeared a pipedream less than a year back, is now ready to be implemented.

In perhaps the most transparent exercises in Indian budget making, the idea of the Negative List originated in the first concept paper in August, 2011. This was fiercely debated by all, some understandably cautious or even skeptical, a few ruthlessly opposed, while a large majority displayed the foresight to look at the larger canvas; all making many valuable suggestions.

It was evident that we were measuring up to the challenge of remote budget-making entrusted to us. But we knew we had to do some more work. Despite the Negative List being operational in most parts of the world, we had to address our own uniqueness and in our way.

With the level of confidence and trust that we had won, it was natural that we were kept in the picture and informed which of our suggestions were accepted and which were not. The revised concept paper followed in November. We realized that the government was serious with this piece of progressive reform. We had to be likewise. Once again we tried our best to critique and comment on various proposals.

When the Budget announcements came in March, it was no shock or surprise. It was largely an affirmation of what we had known all along. We could see our collective efforts bear fruit.

The Department was also becoming far more reliant in entrusting us the responsibility of reading two rather lengthy draft guidance papers, trying to explain the whole concept and seeking our inputs so that very little was left for experimentation through litigation on either side.

Innumerable seminars organized by various chambers and professional institutes were very illuminating with the CBEC also breaking tradition by holding its own seminar for business in Delhi immediately after the budget followed by a well-attended seminar at its academy for the officers. Not to rest on that laurel alone, CBEC further reinforced learning and doubtclearing with seminars in Delhi, Ahmedabad, Kolkata, and Chennai in June (Mumbai to follow soon), collaborating with industry associations and professional bodies and making it grossly interactive.

And now the final packaged version is before us on June 20, 2012 ready to be operationalised from July 1, 2012.

The head of the family: the Hon’ble Finance Minister of India, who has personally supported this entire initiative, guiding it intellectually and in all other possible ways, has very readily and graciously agreed to find time, out of his most busy schedule, to release the final version of this Educational Guide, indigenously produced and directed by We: The Team Negative List.

(V. K. Garg)

Joint Secretary(TRU) e-mail: garg.vk@nic.in Dated: 20<sup>th</sup> June, 2012

## TAXATION OF SERVICES: AN EDUCATION GUIDE

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# Taxation of Services: An Education Guide

TRU, Central Board of Excise & Customs,

Department of Revenue, Ministry of Finance

June 20, 2012

## 1. Introduction

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### 1.1 Background

The journey of taxation of services began by selective taxation of just three services on July 1, 1994. The first year collections now appear a very modest at Rs 407 crore.

After appearing largely as just-another-tax for the first 8 years, with collections touching Rs 3,302 crore in 2001-02, service tax took some giant leaps in the next 7 years, both on the back of wider coverage as well as increase in tax rate, reaching Rs 60,941 crore in 2008-09. Next two years saw the growth somewhat moderating with collections reaching Rs 70,896 crore in 2010-11.

The buoyancy began once again on the back of some policy initiatives and Service Tax contributed Rs 97,444 crore during 2011-12, an increase of nearly 37% over the previous year.

While the revenue expectations were often exceeded in all these years the administrative challenge began to assume unmanageable proportions. The newer additions to the list of services often raised issues of overlaps with the previously existing services, confounding both sides as to whether some activities were taxed for the first time or were already covered under an earlier, even if a little less specific head.

There was also a near unanimity across a wide section of thinkers that potential of service tax remained huge and largely untapped. Part of the problem identified was the lack of comprehensive taxation of services, not so much in the lack of coverage but more on account of lack of clarity and significant gaps in existing definitions, exposing the tax collection process to avoidable leakages and litigation.

Budget 2012 has ushered a new system of taxation of services; popularly known as Negative List. The new changes are a paradigm shift from the existing system where only services of specified descriptions are subjected to tax. In the new system all services, except those specified in the negative list, will be subject to taxation. For those who like to use modern-day terminology one could call it taxation of service version 2.0.

### 1.2 What is the aim of this Guide?

This guide is aimed at educating the tax payers and the tax administrators on various aspects of the new concept in order to assist them in gaining better understanding about the new system of taxation.

It is clarified at the outset that this guide is merely an educational aid based on a broad understanding of a team of officers of the issues. It is neither a “Departmental Circular” nor a manual of instructions issued by the Central Board of Excise and Customs. To that extent it does not command the required legal backing to be binding on either side in any manner. The guide is being released purely as a measure of

facilitation so that all stakeholders obtain some preliminary understanding of the new issues for smooth transition to the new regime.

### **1.3 What is the key to using this Guide?**

The guide consists of a number of Guidance Notes. Each of the notes deals with a specific topic relating to the negative list. The list of these educational notes is as follows-

Guidance Note 1	Introduction
Guidance Note 2	What is 'service'?
Guidance Note 3	Taxability of a 'service'
Guidance Note 4	Negative List
Guidance Note 5	Place of Provision of Service
Guidance Note 6	Declared Services
Guidance Note 7	Exemptions
Guidance Note 8	Valuation
Guidance Note 9	Rules of Interpretation
Guidance Note 10	Miscellaneous

In addition, the Guide has the following three Exhibits:

Exhibit A1 - List of services specified in the negative list

Exhibit A2 – Place of Provision of Service Rules, 2012.

Exhibit A3- List of exemptions in mega notification

### **1.4 What is the broad scheme of new taxation?**

The key features of the new system of taxation are as follows:

At the outset 'service' has been defined in clause (44) of section 65B of the Act.

Section 66B specifies the charge of service tax which is essentially that service tax

2

shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list.

The negative list of services is contained in section 66D of the Act.

Since provision of service in the taxable territory is an important ingredient of taxability, section 66C empowers the Central Government to make rules for determination of place of provision of service. Under these provisions the Place of Provision of Services Rules, 2012 have been made.

To remove some ambiguities certain activities have been specifically defined by description as services and are referred as Declared Services (listed in section 66E).

In addition to the services specified in the negative list, certain exemptions have been given. Most of the exemptions have been consolidated in a single mega exemption for ease of reference.

Principles have been laid down in section 66F of the Act for interpretation wherever services have to be treated differentially for any reason and also for determining the taxability of bundled services.

The system of valuation of services for levy of service tax and of availment and utilization of Cenvat credits essentially remains the same with only incidental changes required for the new system of taxation

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## Guidance Note 2 –What is Service?

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‘Service’ has been defined in clause (44) of the new section 65B and means –

any activity

for consideration

carried out by a person for another

and includes a declared service.

The said definition further provides that ‘Service’ does not include –

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

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

a transaction only in (iv) money or (v) actionable claim

a service provided by an employee to an employer in the course of the employment. • fees payable to a court or a tribunal set up under a law for the time being in force

There are four explanations appended to the definition of ‘service’ which are dealt with in later part of this Guidance Note. Each of the ingredients bulleted above have been explained in the points below.

### 2.1 Activity

#### 2.1.1 What does the word ‘activity’ signify?

‘Activity’ has not been defined in the Act. In terms of the common understanding of the word activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation.

Activity could be active or passive and would also include forbearance to act. Agreeing to an obligation to refrain from an act or to tolerate an act or a situation has been specifically listed as a declared service under section 66E of the Act.

### 2.2 Consideration

#### 2.2.1 The phrase ‘consideration’ has not been defined in the Act. What is, therefore, the meaning of ‘consideration’?

As per Explanation (a) to section 67 of the Act “consideration” includes any amount that is payable for the taxable services provided or to be provided.

Since this definition is inclusive it will not be out of place to refer to the definition of ‘consideration’ as given in section 2 (d) of the Indian Contract Act, 1872 as follows-



“When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise”

In simple terms, ‘consideration’ means everything received or recoverable in return for a provision of service which includes monetary payment and any consideration of non- monetary nature or deferred consideration as well as recharges between establishments located in a non-taxable territory on one hand and taxable territory on the other hand.

**2.2.2 What are the implications of the condition that activity should be carried out for a ‘consideration’?**

To be taxable an activity should be carried out by a person for a ‘consideration’

Activity carried out without any consideration like donations, gifts or free charities are therefore outside the ambit of service. For example grants given for a research where the researcher is under no obligation to carry out a particular research would not be a consideration for such research.

An act by a charity for consideration would be a service and taxable unless otherwise exempted. ( **for exemptions to charities please see Guidance Note 7**)

Conditions in a grant stipulating merely proper usage of funds and furnishing of account also will not result in making it a provision of service.

Donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of the donor in a specified manner or such that it gives a desired advantage to the donor. **2.2.3 What is the meaning of monetary consideration?**

Monetary consideration means any consideration received in the form of money. ‘Money’ has been defined in section 65B and includes not only cash but also cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler’s cheque, money order, postal or electronic remittance or any such similar instrument.

**2.2.4 What is non-monetary consideration?**

Non-monetary consideration essentially means compensation in kind such as the following:

Supply of goods and services in return for provision of service

Refraining or forbearing to do an act in return for provision of service

Tolerating an act or a situation in return for provision of a service

Doing or agreeing to do an act in return for provision of service

**Illustrations**

If.....	And in return...
A agrees to dry clean B’s clothes	B agrees to click A’s photograph

A agrees not to open dry clean shop in B's neighborhood	B agrees not to open photography shop in A's neighborhood
A agrees to design B's house	B agrees not to object to construction of A's house in his neighborhood
A agrees to construct 3 flats for B on land owned by B	B agrees to provide one flat to A without any monetary consideration

**Then**

For the services provided by A to B, the acts of B specified in 2<sup>nd</sup> column are non- monetary consideration provided by B to A. Conversely, for services provided by B to A, similar reasoning will be adopted.

**2.2.5 Is the value of non-monetary consideration important?**

Yes. The non-monetary consideration also needs to be valued for determining the tax payable on the taxable service since service tax is levied on the value of consideration received which includes both monetary consideration and money value of non-monetary consideration.

**2.2.6 How is the money value of non-monetary consideration determined?**

The value of non-monetary consideration is determined as per section 67 of the Act and the Service Tax (Determination of Value) Rules 2006, which is equivalent money value of such consideration and if not ascertainable, then as follows:-

On the basis of gross amount charged for similar service provided to other person in the ordinary course of trade;

Where value cannot be so determined, the equivalent money value of such consideration, not less than the cost of provision of service.

For details please refer to point no 8.1.8 and 8.1.9 of this Guide.

**2.2.7 Are research grant with counter obligation on researcher to provide IPR rights on outcome of a research a consideration?**

In case research grant is given with counter obligation on the researcher to provide IPR rights on the outcome of research or activity undertaken with the help of such grants then the grant is a consideration for the provision of service of research. General grants for researches will not amount to a consideration.

**2.3 Activity for a consideration**

The concept 'activity for a consideration' involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e. without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration' even though such an activity may lead to accrual of gains to the person carrying out the activity.

Thus an award received in consideration for contribution over a life time or even a singular achievement carried out independently or without reciprocity to the amount to be received will not comprise an activity for consideration.

There can be many activities without consideration. An artist performing on a street does an activity without consideration even though passersby may drop some coins in his bowl kept after feeling either rejoiced or merely out of compassion. They are, however, under no obligation to pay any amount for listening to him nor have they engaged him for his services. On the other hand if the same person is called to perform on payment of an amount of money then the performance becomes an activity for a consideration.

Provisions of free tourism information, access to free channels on TV and a large number of governmental activities for citizens are some of the examples of activities without consideration.

Similarly there could be cases of payments without an activity though they cannot be put in words as being “consideration without an activity”. Consideration itself pre-supposes a certain level of reciprocity. Thus grant of pocket money, a gift or reward (which has not been given in terms of reciprocity), amount paid as alimony for divorce would be examples in this category. However a reward given for an activity performed explicitly on the understanding that the winner will receive the specified amount in reciprocity for a service to be rendered by the winner would be a consideration for such service. Thus amount paid in cases where people at large are invited to contribute to open software development (e.g. Linux) and getting an amount if their contribution is finally accepted will be examples of activities for consideration.

### **2.3.1 Would imposition of a fine or a penalty for violation of a provision of law be a consideration for the activity of breaking the law making such activity a ‘service’?**

No. To be a service an activity has to be carried out for a consideration. Therefore fines and penalties which are legal consequences of a person’s actions are not in the nature of consideration for an activity.

### **2.3.2 Would the payments in the nature as explained in column A of the table below constitute a consideration for provision of service?**

S. No.	A Nature of payment	B Whether consideration for service?
1.	Amount received in settlement of dispute.	Would depend on the nature of dispute. Per se such amounts are not consideration unless it represents a portion of the consideration for an activity that has been carried out. If the dispute itself pertains to consideration relating to service then it would be a part of consideration.
2.	Amount received as advances for performance of service.	Such advances are consideration for the agreement to perform a service.
3.	Deposits returned on cancellation of an agreement to provide a service.	Returned deposits are in the nature of a returned consideration. If tax has already been paid the tax payer would be entitled to refund to the extent specified and subject to provisions of law in this regard.
4.	Advances forfeited for cancellation of an agreement to provide a service.	Since service becomes taxable on an agreement to provide a service such forfeited deposits would represent consideration for the agreement that was entered into for provision of service.
5.	Security deposit that is returnable on completion of provision of service.	Returnable deposit is in the nature of security and hence do not represent consideration for service. However if the deposit is in the nature of a colorable device wherein the interest on the deposit substitutes for the consideration for service provided or the interest earned has a perceptible impact on the consideration charged for service then such interest would form part of gross amount received for the service. Also security deposit should not be in lieu of advance payment for the service.
6.	Security deposits forfeited for damages done by service receiver in the course of receiving a service	If the forfeited deposits relate to accidental damages due to unforeseen actions not relatable to provision of service then such forfeited deposits would not be a consideration in terms of clause (vi) of sub-rule (2) of rule 6 of the Valuation Rules.

7.	Excess payment made as a result of a mistake	If returned it is not consideration . If not returned and retained by the service provider it becomes a part of the taxable value.
8.	Demurrages payable for use of services beyond the period initially agreed upon e.g. retention of containers beyond the normal period.	This will be consideration and is covered by clause (x) of sub -rule (1) to Rule 6 of the Valuation Rules.

### **2.3.3 Can a consideration for service be paid by a person other than the person receiving the benefit of the service?**

Yes. The consideration for a service may be provided by a person other than the person receiving the benefit of service as long as there is a link between the provision of service and the consideration. For example, holding company may pay for services that are provided to its associated companies.

#### **2.4 By a person for another**

##### **2.4.1 What is the significance of the phrase ‘carried out by a person for another’?**

The phrase ‘provided by one person to another’ signifies that services provided by a person to self are outside the ambit of taxable service. Example of such service would include a service provided by one branch of a company to another or to its head office or vice-versa.

##### **2.4.2 Are there any exceptions wherein services provided by a person to oneself are taxable?**

Yes. Two exceptions have been carved out to the general rule that only services provided by a person to another are taxable. These exceptions, contained in Explanation 2 of clause (44) of section 65B, are:

an establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons. [Similar provision exists presently in section 66A (2)].

an unincorporated association or body of persons and members thereof are also treated as distinct persons. [Also exists presently in part as explanation to section 65].

Implications of these deeming provisions are that inter-se provision of services between such persons, deemed to be separate persons, would be taxable. For example, services provided by a club to its members and services provided by the branch office of a multinational company to the headquarters of the multi-national company located outside India would be taxable provided other conditions relating to taxability of service are satisfied.

##### **2.4.3 Are services provided by persons who have formed unincorporated joint ventures or profit-sharing arrangements liable to be taxed?**

The services provided, both by the so constituted JV or profit sharing association of persons (AOP), as well as by each of the individual persons constituting the JV/AOP will be liable to be taxed separately,

subject of course to the availability of the credit of the tax paid by independent persons to the JV/AOP and as otherwise admissible under Cenvat Rules..

#### **2.4.4 Who is a 'person'? Is it only a natural person or includes an artificial or a juridical person?**

'Person' is not restricted to natural person. 'Person' has been defined Section 65 B of the Act. The following shall be considered as persons for the purposes of the Act:

an individual

a Hindu undivided family

a company

a society

a limited liability partnership

a firm

an association or body of individuals, whether incorporated or not

Government

a local authority, or

every artificial juridical person, not falling within any of the preceding sub-clauses.

#### **2.4.5 Are Government and local authorities also liable to pay tax?**

Yes. However, most of the services provided by the Government or local authorities are in the negative list.

#### **2.4.6 What is the rationale behind taxing certain activities of the Government or local authorities?**

Only those activities of Government or local authorities are taxed where similar or substitutable services are provided by private entities. The rationale is as follows-

to provide a level playing field to private entities in these areas as exemption to Government in such activities would lead to competitive inequities; and

to avoid break in Cenvat chain as the support services provided by Government are normally in the nature of intermediary services.

#### **2.4.7 What is the meaning of 'Government'?**

The phrase 'Government' has not been defined in the Act. As per clause (23) of section 3 of the General Clauses Act, 1897 'Government' includes both Central Government and any State Government. As per clause (8) of section 3 of the said Act 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, mean the President. As per article 53 of the Constitution the executive power of the Union shall be vested in the President and shall be exercised by him either

directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of article 77 of the Constitution all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President.

Similarly as per clause (60) of section 3 of the General Clauses Act, 1897 'State Government', as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in Union Territory the Central Government. Further as per article 154 of the Constitution the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution all executive actions of the Government of State shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive power of the State vested in the Governor and in the name of the Governor.

#### **2.4.8 What is a local authority?**

Local authority is defined in clause (31) of section 65B and means the following:-

A Panchayat as referred to in clause (d) of article 243 of the Constitution

A Municipality as referred to in clause (e) of article 243P of the Constitution

A Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund

A Cantonment Board as defined in section 3 of the Cantonments Act, 2006

A regional council or a district council constituted under the Sixth Schedule to the Constitution

A development board constituted under article 371 of the Constitution, or

A regional council constituted under article 371A of the Constitution.

#### **2.4.9 Are all local bodies constituted by a State or Central Law local authorities?**

No. The definition of 'local authority' is very specific as explained in point no 2.4.8 above and only those bodies which fall in the definition comprise 'local authorities'. It would not include other bodies which are merely described as a local body by virtue of a local law.

However it may be noted that services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution are specifically exempt under the mega exemption. 'Governmental authority' has been defined in the said mega exemption as 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. Thus some of these local bodies may comprise governmental authorities.

#### **2.4.10 Would various entities like a statutory body, corporation or an authority constituted under an Act passed by the Parliament or any of the State Legislatures be ‘Government’ or “local authority”?**

A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither ‘Government’ nor a ‘local authority’ as would be evident from the meaning of these terms explained in point nos. 2.4.7 and 2.4.8 above respectively. Such statutory body, corporation or an authority are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a settled position of law Government (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1). Such a statutory body, corporation or an authority as a juristic entity is separate from the state and cannot be regarded as Central or State Government and also do not fall in the definition of ‘local authority’.

Thus regulatory bodies and other autonomous entities which attain their entity under an act would not comprise either government or local authority.

#### **2.4.11 Would services provided by one department of the Government to another Department of the Government be taxable?**

If services are provided by one department of the Central Government to another department of the Central Government or by a department of a State Government to another department of the same State Government then such service would not be taxable as it would amount to self-service. To be taxable a service has to be provided to another person.

On the other hand if a service is provided by a Central Government department to a State Government department or vice versa or a by a State to another State Government or by a Government to an autonomous body, the same would be taxable if such service does not fall in the negative list. It is another matter that most of the services provided by the Government are in the negative list. For details please refer to point no. 4.1 of this Guide.

#### **2.4.12 Would taxable services provided by Government or local authorities still be liable to tax if they are covered under any other head of the negative list or are otherwise exempted?**

No. For example, transport services provided by Government to passengers by way of a stage carriage would not be taxable as transport of passengers by stage carriage has separately been specified in the negative list of services. The specified services provided by the Government or local authorities are taxable only to the extent they are not covered elsewhere i.e. either in the negative list or in the exemptions.

### **2.5 Activities specified in the declared list are services.**

Declared Services are activities that have been specified in Section 66 E of the Act. When such activities are carried out by one person for another in the taxable territory for a consideration then such activities are taxable services. For guidance on the declared services please refer to **Guidance Note 6**.



2.6 Activity to be taxable should not constitute only a transfer in title of goods or immovable property by way of sale, gift or in any other manner

Mere transfer of title in goods or immovable property by way of sale, gift or in any other manner for a consideration does not constitute service.

Goods has been defined in section 65B of the Act as ‘every kind of moveable property other than actionable claims and money; and includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale’.

Immovable property has not been defined in the Act. Therefore the definition of immovable property in the General Clauses Act, 1897 will be applicable which defines immovable property to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

### **2.6.1 What is the significance of the phrase ‘transfer of title’?**

‘Transfer of title’ means change in ownership. Mere transfer of custody or possession over goods or immovable property where ownership is not transferred does not amount to transfer of title. For example giving the property on rent or goods for use on hire would not involve a transfer of title.

### **2.6.2 What is the significance of the word ‘only’ in the said exclusion clause in the definition of ‘service’?**

The word ‘only’ signifies that activities which constitute only:

transfer of title in goods or immovable property; or

transfer, supply or delivery which is deemed to be a deemed sale of goods or constitute; or

a transaction in money or an actionable claim-are outside the definition of service.

A transaction which in addition to a transfer of title in goods or immovable property involves an element of another activity carried out or to be carried out by the person transferring the title would not be outrightly excluded from the definition of service. Such transactions are liable to be treated as follows-

If two transactions, although associated, are two discernibly separate transactions then each of the separate transactions would be assessed independently. In other words the discernible portion of the transaction which constitutes, let’s say, a transfer of title in goods, would be excluded from the definition of service by operation of the said exclusion clause while the service portion would be included in the definition of service. For example a builder carrying out an activity for a client wherein a flat is constructed by the builder for the client for which payments are received in instalments and on completion of the construction the title in the flat is transferred to the client involves two elements namely provision of construction service and transfer of title in immovable property. The two activities are discernibly separate. The activity of construction carried out by the builder would, therefore, be a service and the activity of transfer of title in the flat would be outside the ambit of service.

In cases of composite transactions, i.e. transactions involving an element of provision of service and an element of transfer of title in goods in which various elements are so inextricably linked that they essentially form one composite transaction then the nature of such transaction would be determined by

the application of the dominant nature test laid down by the Supreme Court in BSNL's case. The judgement has been explained in detail in point no 2.6.3. Although the judgement was given in the context of composite transactions involving an element of transfer in title of goods by way of sale and an element of provision of service, the ratio would equally apply to other kind of composite transactions involving a provision of service and transfer in title in immovable property or actionable claim.

### **2.6.3 What is the manner of dealing with composite transactions which in addition to a transfer of title in goods involve an element of provision of service?**

The manner of treatment of such composite transactions for the purpose of taxation, i.e. are they to be treated as sale of goods or provision of service, has been laid down by the Honorable Supreme Court in the case of Bharat Sanchar Nigam Limited vs Union of India [2006(2)STR161(SC)]. The relevant paras 42 and 43 of the said judgment are reproduced below -

**“42.** Of all the different kinds of composite transactions the drafters of the 46th Amendment chose three specific situations, a works contract, a hire purchase contract and a catering contract to bring within the fiction of a deemed sale. Of these three, the first and third involve a kind of service and sale at the same time. Apart from these two cases where splitting of the service and supply has been Constitutionally permitted in Clauses (b) and (g) of Clause 29A of Art. 366, there is no other service which has been permitted to be so split. For example the clauses of Article 366(29A) do not cover hospital services. Therefore, if during the treatment of a patient in a hospital, he or she is given a pill, can the sales tax authorities tax the transaction as a sale? Doctors, lawyers and other professionals render service in the course of which can it be said that there is a sale of goods when a doctor writes out and hands over a prescription or a lawyer drafts a document and delivers it to his/her client? Strictly speaking with the payment of fees, consideration does pass from the patient or client to the doctor or lawyer for the documents in both cases.

**43.** The reason why these services do not involve a sale for the purposes of Entry 54 of List II is, as we see it, for reasons ultimately attributable to the principles enunciated in Gannon Dunkerley's case, namely, if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. The test therefore for composite contracts other than those mentioned in Article 366 (29A) continues to be - did the parties have in mind or intend separate rights arising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is the substance of the contract. We will, for the want of a better phrase, call this the **dominant nature test.**”

The following principles emerge from the said judgment for ascertaining the taxability of composite transactions-

Except in cases of works contracts or catering contracts [exact words in article 366(29A) being – ‘service 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 service’] composite transactions cannot be split into contracts of sale and contracts of service.

The test whether a transaction is a 'composite transaction' is that did the parties intend or have in mind that separate rights arise out of the constituent contract of sale and contract of service. If no then such transaction is a composite transaction even if the contracts could be disintegrated.

The nature of a composite transaction, except in case of two exceptions carved out by the Constitution, would be determined by the element which determines the 'dominant nature' of the transaction.

If the dominant nature of such a transaction is sale of goods or immovable property then such transaction would be treated as such.

If the dominant nature of such a transaction is provision of a service then such transaction would be treated as a service and taxed as such even if the transaction involves an element of sale of goods.

In case of works contracts and 'service 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 service' the 'dominant nature test' does not apply and service portion is taxable as a 'service' This has also been declared as a service under section 66E of the Act. For guidance on these two types of composite transactions and the manner of determining the value portion of service portion of such composite transactions please refer to point nos. 5.8 and 5.9 of this Guidance Paper.

If the transaction represents two distinct and separate contracts and is discernible as such then contract of service in such transaction would be segregated and chargeable to service tax if other elements of taxability are present. This would apply even if a single invoice is issued.

The principles explained above would, mutatis mutandis, apply to composite transactions involving an element of transfer of title in immovable property or transaction in money or an actionable claim.

#### **2.6.4 Why has notification 12/2003-ST been deleted?**

Notification 12/2003 – ST exempted so much of the value of all taxable services as was equal to the value of goods and materials **sold** (emphasis supplied) by the service provider to the service recipient subject to condition that there is documentary proof of such value of goods and materials. This was necessary under the regime of taxation of services based on specified descriptions as some of the specified descriptions could include an element of transfer of title in goods.

On the other hand, under the negative list scheme, specified descriptions of taxable services have been done away with and transactions that involve transfer of title in goods or are 'deemed to be sale of goods' under the Constitution are excluded from the ambit of service by the very definition of service. Therefore if, in the course of providing a service, goods are also being sold by a service provider for which there is such documentary proof as to make the sale a distinct and a separate transaction then the activity of sale of such goods gets excluded from the definition of service itself. The essence and intent of notification no 12/2003 has, therefore, been fully captured in the definition of service itself.

#### **2.6.5 Will the goods portion in transactions like annual maintenance contracts or erection and commissioning or construction be includible in the value of services consequent to the deletion of Notification 12/2003-ST?**

All the examples given in the question now comprise "works contracts" and only the service portion of such contracts comprise service. By the express provisions contained in the definition of service (which

is mandated by constitutional provisions) it is not possible to tax the goods portion of works contracts. However the principles of segregation of the value of goods are provided in Rule 2A of the Valuation Rules. Thus there is no basis for the taxation of goods in such contracts even after the deletion of the stated notification.

Even for the sale of any equipment for which a separate contract for warranty or after sales services or maintenance is entered the discernible sales portion is not to be included in the discernible portion of the value of service. For all practical purposes these will be two separate contracts. However for artificial segregation of value between goods and services, to save either of the taxes on goods or services, the benefit was neither available earlier under the stated notification and the position continues to be the same under the new regime.

### **2.6.6 “Securities” have been included as goods. What are securities?**

Securities have been defined in section 65B of the Act as having the same meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 Of 1956) in terms of which ‘securities’ includes –

Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.

Derivative.

Security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Units or any other such instrument issued to the investors under any mutual fund scheme.

Any certificate or instrument (by whichever name called), issued to any investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

Government securities;

Such other instruments as may be declared by the Central Government to be securities.

Rights or interest in securities.

### **2.6.7 What are the implications of inclusion of ‘securities’ as ‘goods’?**

The definition of ‘goods’ has essentially been borrowed from the Sale of Goods Act, 1930 with the only variation that in the inclusion clause of the said definition the phrase ‘stocks and shares’ been replaced with ‘securities’. In effect, therefore, activities that are in the nature of only transfer of title by way of sale, redemption, purchase or acquisition of securities on principal-to-principal basis, excluding services of dealers, brokers or agents in relation to such transactions, are outside the ambit of ‘services. However activities which are not in the nature of transfer of title in securities (for example a person agreeing not to exercise his right in a security for a given period of time for a consideration) would not be included in this exclusion clause to the definition of ‘service.

### **2.6.8 What is a derivative?**

As per in clause (ac) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 Of 1956) “derivative” includes—

a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

a contract which derives its value from the prices, or index of prices, of underlying securities.

The definition of ‘derivatives’ in the said Act is an inclusive definition. Moreover, it may be noticed that as per the said definition ‘derivative’ includes security derived from a ‘contract of difference’ which is of a very wide ambit.

It would thus be prudent to keep in mind definition of derivatives as contained in Clause (a) of Section 45U of the RBI Act, 1935 as per which a ‘derivates’ means an instrument, to be settled at a future date, whose value is derived from change in interest rate, foreign exchange rate, credit rating from credit index, price of securities (also called “underlying”) , or a combination of a more than one of them and includes interest rates swaps, forward rate agreements, foreign currency swaps, foreign currency-rupee swaps, foreign currency options, foreign currency-rupee options or such other instruments as may be specified by the Bank from time-to- time. Transactions, including over the counter transactions, in such securities would therefore be out of the ambit of definition of ‘service’.

However if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be considerations for provision of service and chargeable to service tax.

### **2.6.9 Would buying or selling of mutual funds or debentures be a ‘service’?**

No. buying or selling of mutual funds or debentures would not be a service as the same would be a transaction in securities.

### **2.6.10 Whether the service tax would be chargeable on the ‘entry and exit load’ amount charged by a mutual fund to the investor?**

As per the definition of ‘service’ only activities which are in the nature of transfer of title in goods (which includes securities) are excluded. As a consideration for the transfer of title in mutual funds the investors pay amounts equal to NAV of the mutual fund. Entry or exit loads are in the nature of consideration for documentation, covering initial expenses, asset management etc. Hence service tax would be leviable on such entry and exit loads.

Service tax would also be leviable on fund management activity undertaken by an asset management company (AMC) for which an AMC charges the mutual fund an ‘investment and advisory fee’, in accordance with provisions contained in the SEBI regulation.

### **2.6.11 What is the meaning of ‘immoveable property’?**

‘Immoveable property’ has not been defined in the Act. Therefore, the definition of ‘immoveable property as given in clause (26) of the General Clauses Act, 1897 has to be taken as per which

“immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

## **2.7 Activity to be taxable should not constitute merely a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution.**

### **2.7.1 What are ‘deemed sales’ defined in article 366(29A)?**

The six categories of deemed sales as defined in article 366(29A) of the Constitution are –

transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration

transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract

delivery of goods on hire-purchase or any system of payment by installments

transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration

supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration

supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration.

### **2.7.2 Once transfer of title by way of sale of goods is specifically excluded, what is the need to exclude deemed sales specifically?**

Some categories of deemed sales do not involve transfer of title in goods like transfer of goods on hire-purchase or transfer of right to use goods. Accordingly, deemed sales have been specifically excluded.

### **2.7.3 Is there a possible conflict between exclusion of transactions covered under Article 366 (29A) and activities that have been declared as services under section 66E?**

No. Activities specified under section 66E, which are related to transactions that are deemed as sales under article 366 (29A), have been carefully specified to ensure that there is no conflict. This would be evident from the following illustrations-

Transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is a category of deemed sales. On the other hand the declared list entry is limited to the service portion in execution of a works contract.

Delivery of goods on hire-purchase or any system of payment by installments is deemed to be a sale under article 366 (29A), while the related declared service list entry is limited to activities related to delivery of goods on hire-purchase or any system of payment by installments

Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration is again a specified category of deemed sales. The declared list entry in clause (f) of section 66E specifies transfer of goods by way of hiring, leasing or licensing or in any such manner without involving transfer of right to use goods as a declared service.

Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration is a deemed sale of goods. Such supply takes place in restaurants or in catering. On the other hand clause (i) of section 66E restricts the declared service to service portion in an activity where such supply of food or drinks takes place.

It is thus evident that the activities specified as declared services in section 66E do not encroach upon the area of deemed sales. In fact most of the declared services have been specified with the intent of clarifying the distinction between deemed sales and activities related thereto which are outside the realm of deemed sales but qualify as a service.

2.8 Transactions only in money or actionable claims do not constitute service

### **2.8.1 What kind of activities would come under ‘transaction only in money’?**

The principal amount of deposits in or withdrawals from a bank account.

Advancing or repayment of principal sum on loan to someone.

Conversion of Rs 1,000 currency note into one rupee coins to the extent amount is received in money form.

### **2.8.2 Would a business chit fund comes under ‘transaction only in money’?**

In business chit fund since certain commission received from members is retained by the promoters as consideration for providing services in relation to the chit fund it is not a transaction only in money. The consideration received for such services is therefore chargeable to service tax.

### **2.8.3 Would the making of a draft or a pay order by a bank be a transaction only in money?**

No. Since the bank charges a commission for preparation of a bank draft or a pay order it is not a transaction only in money. However, for a draft or a pay order made by bank the service provided would be only to the extent of commission charged for the bank draft or pay order. The money received for the face value of such instrument would not be consideration for a service since to the extent of face value of the instrument it is only a transaction in money.

### **2.8.4 Would an investment be transaction only in money?**

Investment of funds by a person with another for which the return on such investment is returned or repatriated to the investors without retaining any portion of the return on such investment of funds is a transaction only in money. Thus a partner being admitted in a partnership against his share will be a transaction in money. However, if a commission is charged or a portion of the return is retained as service charges, then such commission or portion of return is out of the purview of transaction only in money and hence taxable. Also, if a service is received in lieu of an investment it would cease to be a

transaction only in money to the extent the investment represents the consideration for the service received.

**2.8.5 What is the significance of Explanation 2 to the definition of service in clause (44) of section 65B of the Act?**

The said Explanation 2 clarifies that transaction in money does not include any activity in relation to money by way of its use or 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. The implications of this explanation are that while mere transactions in money are outside the ambit of service, any activity related to a transaction in money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination would not be treated as a transaction in money if a separate consideration is charged for such an activity. While the transaction in money, per-se, would be outside the ambit of service the related activity, for which a separate consideration is charged, would not be treated as a transaction of money and would be chargeable to service tax if other elements of taxability are present. For example a foreign exchange dealer while exchanging one currency for another also charges a commission (often inbuilt in the difference between the purchase price and selling price of forex). The activity of exchange of currency, per-se, would be a transaction only in money, the related activity of providing the services of conversion of forex, documentation and other services for which a commission is charged separately or built in the margins would be very much a 'service'.

**2.8.6 Would debt collection services or credit control services be considered to be transaction only in money?**

No. Such services provided for consideration are taxable.

**2.8.7 What are actionable claims?**

As per section 3 of the Transfer of Property Act, 1893 actionable claims means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Illustrations of actionable claims are -

Unsecured debts

Right to participate in the draw to be held in a lottery.

**2.8.8 If an unsecured debt is transferred to a third person for a consideration would this activity be treated as service?**

No. Since unsecured debt is an actionable claim, a transaction only in such actionable claim is outside the ambit of service. However if a service fee or processing fee or any other charge is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax.



### **2.8.9 Would sale, purchase, acquisition or assignment of a secured debt like a mortgage also constitute a transaction in money?**

Yes. However if a service fee or processing fee or any other charge is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax.

### **2.8.10 What is the scope of ‘beneficial interest in moveable property’ in the definition of actionable claim?**

Black’s Law Dictionary defines ‘beneficial interest’ as follows-

“A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property”

Therefore ‘beneficial interest in moveable property’ is a right or expectancy in a moveable property like right to receive income accruing from a moveable property. It may be noted that accrual of income from a moveable property could be in the nature of a consideration for a taxable service, e.g. a hiring fees or a license fee accruing on hiring or licensing of a moveable property. In such a situation the service being provided in relation to such moveable property would not be covered in the exclusion clause. It is only if the beneficial interest in such property is transferred to another person for a consideration that the activity of transferring the beneficial interest would be covered.

### **2.8.11 Would vouchers that entitle a person to enjoy a service, for example a health club, be an actionable claim?**

No. Such a voucher does not create a ‘beneficial interest’ in a moveable property but only entitles a person to enjoy a particular service for a single or specified number of times.

### **2.8.12 Would recharge vouchers issued by service companies for enabling clients/ consumers to avail services like mobile phone communication, satellite TV broadcasts, DTH broadcasts etc be ‘actionable claims’?**

No. Such recharge vouchers do not create a ‘beneficial interest’ in a moveable property but only enable a person to enjoy a particular service.

2.9 Provision of service by an employee to the employer is outside the ambit of service

### **2.9.1 Are all services provided by an employer to the employee outside the ambit of services?**

No. Only services that are provided by the employee to the employer in the course of employment are outside the ambit of services. Services provided outside the ambit of employment for a consideration would be a service. For example, if an employee provides his services on contract basis to an associate company of the employer, then this would be treated as provision of service.

### **2.9.2 Would services provided on contract basis by a person to another be treated as services in the course of employment?**

No. Services provided on contract basis i.e. principal-to-principal basis are not services provided in the course of employment.

### 2.9.3 Would amounts received by an employee from the employer on premature termination of contract of employment be chargeable to service tax?

No. Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would not be chargeable to service tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act.

### 2.9.4 What is the status of services provided by casual workers or contract labour?

If..... taxable	Then.....
Services provided by casual worker to employer who gives wages on daily basis to the worker	These are services provided by the worker in the course of employment
Casual workers are employed by a contractor, like a building contractor or a security services agency, who deploys them for execution of a contract or for provision of security services to a client	Services provided by the workers to the contractor are services in the course of employment and hence not taxable. However, services provided by the contractor to his client by deploying such workers would not be a service provided by the workers to the client in the course of employment. The consideration received by the contractor would therefore be taxable if other conditions of taxability are present.

### 2.10 Explanations to the definition of 'service'

**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, 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 2** clarifies that transaction in money does not include any activity in relation to money by way of its use or 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.'(please refer to point no 2.8.5 for further guidance on this)

**Explanation 3** 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 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. Further an unincorporated association or body of

persons and members thereof are also deemed as separate persons. For implications please see point no 2.4.2 of this Guide.

**Explanation 4** explains that a branch or an agency of a person through which the person carries out business is also an establishment of such person.

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Guidance Note 3 – Taxability of Services

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The taxability of services or the charge of service tax has been specified in section 66B of the Act. To be a taxable a service should be –  
provided or agreed to be provided by a person to another  
in the taxable territory  
and should not be specified in the negative list.

3.1 Provided or agreed to be provided

### **3.1.1 What is the significance of the phrase ‘agreed to be provided’?**

The phrase “agreed to be provided” has been retained from the definition of taxable service as contained in the erstwhile clause (105) of section 65 of the Act. The implications of this phrase are –

Services which have only been agreed to be provided but are yet to be provided are taxable

Receipt of advances for services agreed to be provided become taxable before the actual provision of service

Advances that are retained by the service provider in the event of cancellation of contract of service by the service receiver become taxable as these represent consideration for a service that was agreed to be provided.

### **3.1.2 Does the liability to pay the service tax on a taxable service arise the moment it is agreed to be provided without actual provision of service?**

No. The point of taxation is determined in terms of the Point of Taxation Rules, 2011. As per these Rules point of taxation is –

the time when the invoice for the service provided or agreed to be provided is issued;

if invoice is not issued within prescribed time period( 30 days except for specified financial sector where it is 45 days) of completion of provision of service then the date of completion of service;

the date of receipt of payment where payment is received before issuance of invoice or completion of service.

Therefore agreements to provide taxable services will become liable to pay tax only on issuance of invoice or date of completion of service if invoice is not issued within prescribed period of completion or on receipt of payment. For specific cases covered under the said Rules, including continuous supply of service, please refer to the Point of Taxation Rules, 2011.

### 3.2 Provided in the taxable territory

Taxable territory has been defined in section 65B of the Act as the territory to which the Act applies i.e. the whole of territory of India other than the State of Jammu and Kashmir.

“India” includes not only the land mass but its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976(- of 1976); the sea-bed and the subsoil underlying the territorial waters; the air space above its territory and territorial waters; and the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

Detailed rules called the Place of Provision of Services Rules, 2012 have been made which determine the place of provision of service depending on the nature and description of service.

Please refer to Guidance Note 5 relating to the Place of Provision of Services Rules, 2012

### 3.3 Service should not be specified in the negative list

As per section 66B, to be taxable a service should not be specified in the negative list. The negative list of services has been specified in section 66D of the Act. For the sake of simplicity the negative list of services has been reproduced in **Exhibit A1** to this Guidance Paper. For guidance on the negative list please refer to **Guidance Note 4**.

### 3.4 Relevant Questions relating to taxability of services

#### 3.4.1 How do I know that I am performing a taxable service in the absence of a positive list?

The drill to identify whether you are providing taxable service is very simple. Pose the questions listed in Step 1 and Step 2 below-

Step 1

#### To determine whether you are providing a ‘Service’

Pose the following questions to yourself

S.NO.	QUESTION	ANSWER
1		2

1	Am I doing an activity (including, but not limited to, an activity specified in section 66E of the Act) for another person*?	Yes
2	Am I doing such activity for a consideration?	Yes
3	Does this activity consist only of transfer of title in goods or immovable property by way of sale, gift or in any other manner?	No
4.	Does this activity constitute only a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution	No
5	Does this activity consist only of a transaction in money or actionable claim?	No
6	Is the consideration for the activity in the nature of court fees for a court or a tribunal?	No
7	Is such an activity in the nature of a service provided by an employee of such person in the course of employment?	No
8	Is the activity covered in any of the categories specified in Explanation 1 or Explanation 2 to clause (44) of section 65B of the Act (para 2.10)	No

[\*if you are a person doing business through an establishment located in the taxable territory and another establishment located in non taxable territory OR an association or body of persons or a member thereof then please see Explanation 3 to clause (44) of section 65B of the Act (para 2.10) before answering this question]

If the answer to the above questions is as per the answers indicated in column 3 of the table above THEN you are providing a service.

Step 2

### To determine whether service provided by you is taxable

If you are providing a 'service' (Step 1) and then pose the following questions to yourself-

S.NO.	QUESTION	ANSWER
	<b>1</b>	<b>2</b>
1	Have I provided or agreed to provide the service?	Yes
2	Have I provided or agreed to provide the service in the taxable territory?	Yes

3	Is this activity entirely covered in any of the services described in the negative list of services specified in section 66D of the Act?	No
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If the answer to the above questions is also as per the answers given in column 3 of the table above THEN you are providing a 'taxable service'

### 3.4.2 Will I have to pay service tax for all taxable services provided in the taxable territory?

No. You will not have to pay service tax on taxable services provided by you in the following cases:

if in the previous financial year the aggregate value of taxable services provided by you was less than Rs.10 lakh and in the present financial year the aggregate value of taxable services provided by you is also less than Rs.10 lakh. (you start paying service tax after crossing the threshold of Rs 10 lakh)

If the taxable service provided by you is covered under any one of the exemptions issued under section 93 of the Act.

### 3.4.3 How do I know that the service provided by me is an exempt service?

There are certain exemption notifications that have been issued under section 93 of the Act of which the main exemption no 25/2012-ST dated 20/6/12 has 39 heads (mega notification). If the service provided by you fits into the nature and description of services specified in these notifications then the service being provided by you is an exempted service. For the sake of convenience the proposed mega exemption has been reproduced at **Exhibits A3 of this Guide**.

### 3.4.4 Are declared services also covered by exemptions?

Yes.

### 3.4.5 Are services other than declared services taxable?

Yes. All services, whether declared or not, which are covered under Section 66B of the Act are taxable if elements of taxability are present. The only purpose behind declaring activities as service is to bring uniformity in assessment of such activities across the country.

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Guidance Note 4 – Negative List of Services

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In terms of Section 66B of the Act, service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66 D. For ease of reference the negative list of services is given in **Exhibit A1**. In all, there are seventeen heads of services that have been specified in the negative list. The scope and ambit of these is explained in paras below.

#### 4.1 Services provided by Government or local authority

##### **4.1.1 Are all services provided by Government or local authority covered in the negative list?**

No. Most services provided by the Central or State Government or local authorities are in the negative list except the following:

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;

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

transport of goods and/or passengers;

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

##### **4.1.2 Would the taxable services provided by the Government be charged to tax if they are otherwise exempt or specified elsewhere in the negative list?**

No. If the services provided by the government or local authorities that have been excluded from the negative list entry are otherwise specified in the negative list then such services would also not be taxable.

##### **4.1.3 'Government' has not been defined in the Act. What is the meaning of Government?**

Please refer to point no. 2.4.7.

##### **4.1.4 Are various corporations formed under Central Acts or State Acts or various government companies registered under the Companies Act, 1956 or autonomous institutions set up by a special Acts covered under the definition of 'Government'?**

No. For detailed analysis please refer to point no. 2.4.10.

##### **4.1.5 What entities are then covered under 'Government'?**

'Government' would 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.

##### **4.1.6 Would a department of the Government need to get itself registered for each of the services listed in answer to Q. No.4.1.1 above?**

For the support services provided by the Government, other than where such support services are by way of renting of immovable property, to business entities government departments will not have to get registered because service tax will be payable on such services by the service receiver i.e. the business entities receiving the service under reverse charge mechanism in terms of the provisions of section 68 of the Act and the notification issued under the said section as well Service Tax Rules, 1994. For services mentioned at (a) to (c) of the list (point 4.1.1 above refers) and renting of immovable properties the tax will be payable by the concerned department.

#### **4.1.7 What is the meaning of “support services” which appears to be a phrase of wide ambit?**

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 shall 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, and which are not substitutable in any manner by any private entity, are not support services e.g. grant of mining or licensing rights or audit of government entities established by a special law, which are required to be audited by CAG under section 18 of the Comptroller and Auditor-General’s (Duties, Powers and Conditions of Service) Act, 1971 (such services are performed by CAG under the statute and cannot be performed by the business entity themselves and thus do not constitute support services.)

#### **4.1.8 Will the services provided by Police or security agencies to PSUs or corporate entities or sports events held by private entities be taxable?**

Yes. Services provided by government security agencies are covered by the main portion of the definition of support service as similar services can be provided by private entities. In any case it is also covered by the inclusive portion of the definition. However the tax will be actually payable on reverse charge by the recipient.

#### **4.1.9 What is the meaning of local authority?**

Please refer to point no 2.4.8 and 2.4.9.

#### **4.1.10 Department of Posts provides a number of services. What is the status of those services for the purpose of levy of service tax?**

As per sub-clause (i) of clause (a) of section 66D 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 are excluded from the negative list. Therefore, the following services provided by Department of Posts are not liable to service tax.

Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.

Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

#### **4.1.11 Would agency or intermediary services on commission basis (distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills), which are provided by the Department of Posts to non-government entities be liable to service tax?**

Yes. Agency services carried out on payment of commission on non government business are excluded from the negative list entry relating to services provided by Government or a local authority.



## 4.2 Services provided by Reserve Bank of India

### **4.2.1 Are all services provided by the Reserve Bank of India in the negative list?**

Yes. All services provided by the Reserve Bank of India are in the negative list.

### **4.2.2 What about services provided to the Reserve Bank of India?**

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.

### **4.2.3 Would services provided by banks to RBI be also taxable?**

Yes. Services provided by banks to RBI would be taxable as these are neither in the negative list nor covered in any of the exemptions.

## 4.3 Services by a foreign diplomatic mission located in India

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

## **4.4 Services relating to agriculture or agricultural produce.**

The services relating to agriculture or agricultural produce 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;

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 and warehousing of agricultural produce;

agricultural extension services;

services provided by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of agricultural produce; **4.4.1 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.

**4.4.2 Are activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry included in the definition of agriculture?**

Yes. These activities are included in the definition of agriculture.

**4.4.3 What is the meaning of agricultural produce?**

Agricultural produce has also been defined in section 65B of the Act which 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.

**4.4.4 Would plantation crops like rubber, tea or coffee be also covered under agricultural produce?**

Yes. Such plantation crops are also covered under agricultural produce.

**4.4.5 Would potato chips or tomato ketchup qualify as agricultural produce?**

No. In terms of the definition of agricultural produce, only such processing should be carried out as is usually done by cultivator producers which does not alter its essential characteristics but makes it marketable for primary market. Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case).

**4.4.6 Would operations like shelling of paddy or cleaning of wheat carried out outside the farm be covered in the negative list entry relating to agriculture as sub-clause (iii) of clause (d) of section 66D relating to services by way of processes carried out at an agricultural farm?**

The said sub-clause (iii) also includes 'such like operations which do not alter the essential characteristic of agricultural produce'. Therefore, activities like the processes carried out in agricultural farm would also be covered if the same are performed outside the agricultural farm provided such processes do not alter the essential characteristics of agricultural produce but only make it marketable in the primary market. Therefore, cleaning of wheat would be covered in the negative list entry even if the same is done outside the farm. Shelling of paddy would not be covered in the negative list entry relating to agriculture as this process is never done on a farm but in a rice sheller normally located away from the farm.

However, if shelling is done by way of a service i.e. on job work then the same would be covered under the exemption relating to 'carrying out of intermediate production process as job work in relation to agriculture'.

**4.4.7 Would agricultural products like cereals, pulses, copra and jaggery be covered in the ambit of 'agricultural produce' since on these products certain amount of processing may be done by a person other than a cultivator or producer?**

'Agricultural produce' has been defined in clause (5) of section 65B as 'any produce resulting from cultivation or rearing of plants, animals including all life- forms, on which either no further processing is done or such processing is done as is usually done by the cultivator or producer which does not alter essential characteristics of agricultural produce but make it marketable for primary market'. The processes contemplated in the said definition are those as are 'usually done by the cultivator or producer'

**4.4.8 Would the processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, be covered in the negative list?**

No. Only such processes are covered in the negative list which make agricultural produce marketable in the primary market.

**4.4.9 Would leasing of vacant land with a green house or a storage shed meant for agricultural produce be covered in the negative list?**

Yes. In terms of the specified services relating to agriculture 'leasing' of vacant land with or without structure incidental to its use' is covered in the negative list. Therefore, if vacant land has a structure like storage shed or a green house built on it which is incidental to its use for agriculture then its lease would be covered under the negative list entry.

**4.4.10 What is the meaning of agricultural extension services?**

Agricultural extension services have been defined in section 65B of the Act as application of scientific research and knowledge to agricultural practices through farmer education or training.

**4.4.11 What are the services referred to in the negative list entry pertaining to Agricultural Produce Marketing Committee or Board?**

Agricultural Produce Marketing Committees or Boards are set up under a State Law for purpose of regulating the marketing of agricultural produce. Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc. Services provided by such Agricultural Produce Marketing Committee or Board are covered in the negative list. However any service provided by such bodies which is not directly related to agriculture or agricultural produce will be liable to tax e.g. renting of shops or other property.

4.5 Trading of goods

**4.5.1 Would activities of a commission agent or a clearing and forwarding agent who sells goods on behalf of another for a commission be included in trading of goods?**

No. The services provided by commission agent or a clearing and forwarding agent are not in the nature of trading of goods. These are auxiliary for trading of goods. In terms of the provision of clause (1) of section 66F reference to a service does not include reference to a service used for providing such service. (For guidance on clause (1) of section 66F please refer to Guidance Note 9) Moreover the title in the goods never passes on to such agents to come within the ambit of trading of goods.

#### **4.5.2 Would forward contracts in commodities be covered under trading of goods?**

Yes. Forward contracts would be covered under trading of goods as these are contracts which involve transfer of title in goods on a future date at a pre-determined price.

#### **4.5.3 Would commodity futures be covered under trading of goods?**

In commodity futures actual delivery of goods does not normally take place and the purchaser under a futures contract normally offset 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. These are in the nature of derivatives which have been dealt with in point no. 4.14.9.

#### **4.5.4 Would auxiliary services relating to future contracts or commodity futures be covered in the negative list entry relating to trading of goods?**

No. Such services provided by commodity exchanges clearing houses or agents would not be covered in the negative list entry relating to trading of goods.

#### **4.6 Processes amounting to manufacture or production of goods**

The phrase 'processes amounting to manufacture or production of goods' has been defined in section 65B of the Act as a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act. This entry, therefore, covers manufacturing activity carried out on contract or job work basis, which does not involve transfer of title in goods, provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.

#### **4.6.1 Would service tax be leviable on processes which do not amount to manufacture or production of goods?**

Yes. Service tax would be levied on processes, unless otherwise specified in the negative list, not amounting to manufacture or production of goods carried out by a person for another for consideration. Some of such services relating to processes not amounting to manufacture are exempt as specified in entry no. 30 of Exhibit A3.

#### **4.6.2 Would service tax be leviable on processes on which Central Excise Duty is leviable under the Central Excise Act, 1944 but are otherwise exempted?**

No. If Central Excise duty is leviable on a particular process, as the same amounts to manufacture, then such process would be covered in the negative list even if there is a central excise duty exemption for such process. However if central excise duty is wrongly paid on a certain process which does not amount to manufacture, with or without an intended benefit, it will not save the process on this ground.

#### **4.7 Selling of space or time slots for advertisements other than advertisements broadcast by radio or television**

'Advertisement' has been defined in section 65 B of the Act as "any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or

actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person.”

**4.7.1 Sale of space of time for advertisements not including sale of space for advertisement in print media and sale of time by a broadcasting agency or organization is currently taxed under clause (zzzm) of sub-section (105) of the**

**Finance Act,1944. So what kind of sale of space or time would become taxable and what would be not taxable?**

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

**4.7.2 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 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.

**4.7.3 In case a person provides a composite service of providing space for advertisement that is covered in the negative list entry coupled with taxable service relating to design and preparation of the advertisement how will its taxability be determined?**

This would be a case of bundled services taxability of which has to be determined in terms of the principles laid down in section 66F of the Act.

Bundled services have been defined in the said section as provision of one type of service with another type or types of services.

If such services are bundled in the ordinary course of business then the bundle of services will 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 will be treated as consisting entirely of such service which attracts the highest liability of service tax.

For guidance on how to determine whether or not a combination of services is bundled in the ordinary course of business please refer to **Guidance Note 9 of this Guide**.

#### **4.7.4 Whether merely canvassing advertisement for publishing on a commission basis by persons/agencies is taxable?**

Yes. These services are not covered in the negative list entry.

4.8 Access to a road or a bridge on payment of toll charges

#### **4.8.1 Is access to national highways or state highways also covered in this entry?**

Yes. National highways or state highways are also roads and hence covered in this entry.

#### **4.8.2 Are collection charges or service charges paid to any toll collecting agency also covered?**

No. The negative list entry only covers access to a road or a bridge on payment of toll charges. Services of toll collection on behalf of an agency authorized to levy toll are in the nature of services used for providing the negative list services. As per the principle laid down in sub section (1) of section 66F of the Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.

4.9 Betting, gambling or lottery

“Betting or gambling’ has been defined in section 65B of the Act as ‘putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring’.

#### **4.9.1 Are auxiliary services that are used for organizing or promoting betting or gambling events also covered in this entry?**

No. These services are in the nature of services used for providing the negative list services of betting or gambling. As per the principle laid down in sub section (1) of section 66F of the Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.

4.10 Entry to Entertainment Events and Access to Amusement

### **Facilities.**

‘Entertainment event’ has been defined in section 65B of the Act ‘as an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, such as exhibition of cinematographic films, circus, concerts, sporting events, fairs, pageants, award functions, dance performances, musical performances, theatrical performances including cultural programs, drama, ballets or any such event or programme’.

‘Amusement facility’ has been defined in the Act as ‘a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks,

theme parks or such other places but does not include a place within such facility where other services are provided’.

**4.10.1 If a cultural programme, drama or a ballet is held in an open garden and not in a theatre would it qualify as an entertainment event?**

Yes. The words used in the definition are ‘theatrical performances’ and not ‘performances in theatres’. A cultural programme, drama or a ballet performed in the open does not cease to be a theatrical performance provided it is performed in the manner it is performed in a theatre, i.e. before an audience.

**4.10.2 Would a standalone ride set up in a mall qualify as an amusement facility?**

Yes. A standalone amusement ride in a mall is also a facility in which fun or recreation is provided by means of a ride. Access to such amusement ride on payment of charges would be covered in the negative list.

**4.10.3 Would entry to video parlors exhibiting movies played on a DVD player and displayed through a TV screen be covered in the entry?**

Yes. Such exhibition is an exhibition of cinematographic film.

**4.10.4 Would membership of a club qualify as access to an amusement facility?**

No. A club does not fall in the definition of an amusement facility.

**4.10.5 Would auxiliary services provided by a person, like an event manager, for organizing an entertainment event or by an entertainer for providing the entertainment to an entertainment event organizer be covered in this entry?**

No. Such services are in the nature of services used for providing the service specified in this negative list entry and would not be covered in the ambit of such specified service by operation of the rule of interpretation contained in clause (1) of section 66F of the Act. For guidance on the rules of interpretation please refer to **Guidance Note 9**.

4.11 Transmission or distribution of electricity

**4.11.1 What is the meaning of electricity transmission or distribution utility?**

An ‘electricity transmission or distribution utility’ has also been defined in section 65B of the

Act. It includes 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

#### **4.11.2 If charges are collected by a developer or a housing society for distribution of electricity within a residential complex then are such services covered under this entry?**

No. The developer or the housing society would be covered under this entry only if it is entrusted with such function by the Central or a State government or if it is, for such distribution, a distribution licensee licensed under the Electricity Act, 2003.

#### **4.11.3 If the services provided by way installation of gensets or similar equipment by private contractors for distribution of electricity covered by this entry?**

No. the entry does not cover services provided by private contractors. Moreover the services provided are not by way of transmission or distribution of electricity.

#### **4.12 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 law for the time being in force;

education as a part of an approved vocational education course

#### **4.12.1 What is the meaning of ‘education as a part of curriculum for obtaining a qualification recognized by law’?**

It means that only such educational services are in the negative list as are related to delivery of education as ‘a part’ of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification.

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

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

a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961)

a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India;

a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.



#### **4.12.3 Are services provided by international schools giving certifications like IB also covered in this entry?**

Yes. Services by way of education up to higher secondary school or equivalent are covered in this entry.

#### **4.12.4 Are services provided by boarding schools 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 will be determined in terms of the principles laid down in section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. In this case since dominant nature is determined by the service of education other dominant service of providing residential dwelling is also covered in a separate entry of the negative list, the entire bundle would be treated as a negative list service.

#### **4.12.5 Are services provided to educational institutions also covered in this entry?**

No. Such services are not covered under the negative list entry. However certain services provided to or by educational institutions are separately exempted under the mega- notification. These are services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

auxiliary educational services; or

renting of immovable property

#### **4.12.6 What are auxiliary educational services?**

‘Auxiliary educational services’ are defined in the mega notification. In term of the definition, the following activities are auxiliary educational services:

any services relating to imparting any skill, knowledge or 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 following services relating to:

admission to such institution

conduct of examination

catering for the students under any mid-day meals scheme sponsored by Government

transportation of students, faculty or staff of such institution.

#### **4.12.7 Are the auxiliary educational services for all educational institutions exempt?**

No. Exemption is available for services to or by educational institutions in respect of education exempted from service tax. Therefore, service tax is chargeable on such auxiliary educational services which are in respect of education chargeable to service tax.

**4.12.8 Are private tuitions covered in the entry relating to education?**

No. However, private tutors can avail the benefit of threshold exemption.

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

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

**4.12.10 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 service is created by clubbing two courses together, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a service which is not bundled in the ordinary course of business contained in section 66F of the Act it is liable to be treated as a course which attracts the highest liability of service tax. However incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well being will be an example of naturally bundled course. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course. (For guidance on 'bundled services' please refer to **Guidance Note 9**).

**4.12.11 Are placement services provided to educational institutions for securing job placements for the students covered in this negative list entry?**

No. Such services do not fall in the category of exempt services provided to educational institutions (please refer to point no 4.12.5 above).

**4.12.12 Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/ MNCs, who come to the institutes for recruiting candidates through campus interviews. Whether services provided by such institutions are taxable?**

Yes. Service tax is liable on services provided by such institutions in relation to campus recruitment as such services are not covered in the negative list.

**4.12.13 Are services of conducting admission tests for admission to colleges exempt?**

Yes in case the educational institutions are providing qualification recognized by law for the time being in force (please refer to point no 4.12.3 above).

**4.12.14 In addition to the services specified in the negative list, which educational services are exempt if provided by a charitable organization?**

Please refer to point no 7.4.1.

4.13 Services by way of renting of residential dwelling for use as residence

‘Renting’ has been defined in section 65B as “allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property’.

**4.13.1 What is a ‘residential dwelling’?**

The phrase ‘residential dwelling’ has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp–site, lodge, house boat, or like places meant for temporary stay.

**4.13.2 Would renting of a residential dwelling which is for use partly as a residence and partly for non residential purpose like an office of a lawyer or the clinic of a doctor be covered under this entry?**

This would also be a case of bundled services as renting service is being provided both for residential use and for non residential use. Taxability of such bundled services has to be determined in terms of the principles laid down in section 66F of the Act. (Please refer to Guidance Note 9).

**4.13.3 Would the nature of renting transactions explained in column 1 of the table below be covered in this negative list entry?**

1	2
If.....	Then.....
(i) 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.
(ii) if 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.
(iii) 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.
(iv) government department allots houses to its employees and charges	such service would be covered in the negative list entry relating to services provided by

a license fee	government and hence non- taxable.
(v) furnished flats given on rent for temporary stay (a few days)	such renting as residential dwelling for the bonafide use of a person or his family for a reasonable period shall be residential use; but if the same is given for a short stay for different persons over a period of time the same would be liable to tax.

#### 4.14 Financial sector

##### 4.14.1 What is the manner of dealing with various services provided by banks and other financial institutions?

Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money. For such services invariably a variety of instruments, often complex in nature, are used in the financial markets. Transactions in such instruments have to be examined on the touchstone of definition of 'service' given in clause (44) of section 65B and the list of services specified in the negative list to see whether such transactions would be chargeable to service tax. Broadly, the following legal provisions would have a bearing on determining the taxability of such transactions.

The definition of 'service' excludes activities that constitute only transactions in money or actionable claims. 'Money' has been defined in clause (33) of section 65B to include instruments like cheques, drafts, pay orders, promissory notes, letters of credit etc. Therefore activities that are only transactions in such instruments would be outside the definition of service. This would include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD') (on the understanding of being in the nature of promissory notes), issuance of drafts or letters of credit etc.

Explanation 2 to clause (44) of section 65B has to be kept in mind which clarifies that transaction in money does not include any activity in relation to money by way of its use or 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. The implications of this explanation are that while mere transactions in money are outside the ambit of service, any activity related to a transaction in money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination would not be treated as a transaction in money if a separate consideration is charged for such an activity. While the transaction in money, per-se, would be outside the ambit of service the related activity, for which a separate consideration is charged, would not be treated as a transaction of money and would be chargeable to service tax if other elements of taxability are present therefore service tax would be levied on service charges normally charged for various transactions in money including charges for making drafts, letter of credit issuance charges, service charges relating to issuance of CDs/CPs etc.

Activities that constitute only transactions in 'goods' are also excluded from the definition of service. 'Goods' have been defined in clause (25) of section 65 B to include 'securities'. Definition of 'securities' include 'derivatives'. These two instruments have been discussed in detail in point no. 2.6.6 to 2.6.8. Transactions in instruments like interest rate swaps and foreign exchange swaps would be excluded

from the definition of 'service' as such instruments are derivatives, being securities, based on contracts of difference. Since only transfer of title in securities is excluded from the definition of 'service' any attendant service charges or fees would be chargeable to service tax.

Further services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. This has been explained in point nos. 14.2 to 14.4 below.

#### **4.14.2 What are the “services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount”?**

The negative list entry covers any such service wherein moneys due are allowed to be used or retained on payment of interest or on a discount. The words used are 'deposits, loans or advances and have to be taken in the generic sense. They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount. This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Illustrations of such services are -

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

Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.

Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.

Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

#### **4.14.3 If any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit would such charges be also a part of this negative list entry?**

No. The services of loans, advances or deposits are exempt 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.

#### **4.14.4 To what extent is invoice discounting or cheque discounting or any other similar form of discounting covered in the negative list entry?**

Such discounting is covered only to the extent consideration is represented by way of discount as such discounting is nothing else but a manner of extending a credit facility or a loan.

#### **4.14.5 Would services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange to general public be covered in this entry?**

No. This entry only covers sale and purchase of foreign exchange between banks or authorized dealers of foreign exchange or between banks and such dealers

#### **4.14.6 Would transactions entered into by banks in instruments like repos and reverse repos be covered in this negative list entry?**

Section 45U(c) of the RBI Act, 1934 defines 'repos' as an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed'.

Section 45U (d) of the RBI Act, 1934 defines 'reverse repos' as an instrument for lending funds by buying securities with an agreement to resell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent'.

Repos and reverse repos are financial instruments of short term call money market that are normally used by banks to borrow from or lend money to RBI. The margins, called the repo rate or reverse repo rate in such transactions are nothing but interest charged for lending or borrowing of money. Thus they have the characteristics of loans and deposits for interest. However they are more appropriately excluded from the definition of service itself being the sale and purchase of securities, which are goods.

#### **4.14.7 Would subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD) be taxable?**

Commercial Paper ('CP') and Certificate of Deposit ('CD') are understood as unsecured money market instruments which may be issued in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI. CPs are normally issued by highly rated companies, primary dealers and financial institutions at a discount to the face value. CDs can be issued by Scheduled Commercial Banks (excluding RRBs and Local Area Banks) and All – India Financial Institutions (FIs) permitted by RBI.

Since these are instruments for lending or borrowing money where in consideration is represented by way of a discount issue or subscription to CPs or CDs would be covered in the negative list entry relating to 'services by way of extending deposits, loans or advances in so far as consideration is represented by way of interest or discount'. It may also be borne in mind that promissory note is included in the definition of money in the Act as given in clause (33) of section 65B.

However if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be considerations for provision of service and chargeable to service tax.

#### **4.14.8 Would forward contracts in commodities or currencies be within the ambit of definition of 'service'?**

A forward contract is an agreement, executed, to purchase or sell a pre-determined amount of a commodity or currency at a pre-determined future date at a pre-determined price. The settlement could be by way of actual delivery of underlying commodity/currency or by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date.

In a forward contract effectively two contracts are entered into, one for purchase and other for sale at a future date at a pre-determined price. These contracts would be in the nature of transfer in title in goods (in case the forward contract relates to a commodity) or transaction only money (in case the forward contract relates to transaction and money). Therefore, forward contracts in commodities or

currencies would not fall in the ambit of definition of 'service'. For transactions in money Explanation 2 to clause (44) of section 65B should also be kept in mind.

However if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be considerations for provision of service and chargeable to service tax.

#### **4.14.9 Would 'future contracts' be chargeable to Service tax?**

Future contracts are in the nature of financial derivatives price of which is depended on the value of underlying stocks or index of stocks or certain approved currencies and the settlement happens normally by way of net settlement with no actual delivery.

Since future contracts are in the nature of contracts of difference based on the prices of underlying stocks or index of stocks or approved currencies, they would be outside to the ambit of definition of 'service' as being transactions only in transfer of title in derivatives. For details please refer to point no. 2.6.8.

#### **4.14.10 Would charges for late payment of dues on credit card outstandings be chargeable to service tax?**

In case of a credit card, issuing entity allows the facility of payment of the purchases made by the card holder within a specified period failing which some charges are levied. The question that arises is whether the credit so extended for this payment is in the nature of a loan or advance for interest.

Interest for delayed payment of any consideration for the sale of goods or provision of service has been specifically excluded from value by rule 6 of valuation rules. Thus ordinarily any interest charged for delayed payment of consideration would have been outside the gambit of service tax. However in the case of credit cards the credit extended is not for the delayed payment of consideration for the provision of services. The services in the case of the credit card are by way of levy of issuing charges or the commission charged from merchants etc. The interest in this case is not for the consideration for the use of the card. Thus the benefit under the valuation rules will not be available to credit card companies.

The other question is whether such credit extended will amount to loans or advances. Loans and advances are meant to signify amounts contractually negotiated as such (loan or advance) and not merely failure to pay an amount at the due date. The exorbitant charges have also no relationship with the prevailing interest for the same class of creditworthiness and are in the nature of consideration for the services rendered for using the convenience of using the services by way of a credit card and hence taxable.

#### **4.15 Services relating to transportation of passengers**

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

Services by:

a stage carriage;

railways in a class other than (i) first class; or (ii) an AC coach;

metro, monorail or tramway;

inland waterways;

public transport, other than predominantly for tourism purpose, in a vessel, between places located in India; and

metered cabs, radio taxis or auto rickshaws.

Following terms have also been defined in section 65B of the Act –

stage carriage

inland waterways

metered cab

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

No. However such services provided by way of hire of a motor vehicle meant to carry more than 12 passengers to a State transport undertaking is exempt (refer entry no. 22 of Exhibit A3).

**4.15.2 In some cases contract carriages get permission or temporary permits to ply as stage carriages. Would such services be taxable?**

Specific exemption is available to services of transport passengers by a contract carriage for transportation of passengers, excluding tourism, conducted tours, charter or hire. (Refer entry No. 23 of Exhibit A3).

**4.15.3 Are national waterways covered in the definition of inland waterways?**

Yes.

**4.15.4 Would services by way of transportation of passengers on a vessel, from say Chennai to Port Blair (mainland – island) or Port Blair to Havelock (inter island), be covered in the negative list entry?**

Yes in case the transportation is not predominantly for tourism purpose. Such transportation by a vessel (of any size) is covered in negative list since such transportation is between two places located in India.

**4.15.5 What is the scope of the phrase ‘predominantly for tourism purpose’ which qualifies the negative list entry relating to public transportation of passengers by a vessel in sub-clause (v) of clause (o) of section 66D?**

The words ‘other than predominantly for tourism purpose’ qualify the preceding words “public transport”. This implies that the public transport by a vessel should not be predominantly for tourism purposes. Normal public ships or other vessels that sail between places located in India would be covered in the negative list entry even if some of the passengers on board are using the service for tourism as predominantly such service is not for tourism purpose. However services provided by leisure or charter vessels or a cruise ship, predominant purpose of which is tourism, would not be covered in the negative list even if some of the passengers in such vessels are not tourists.



#### 4.16 Service relating to transportation of goods

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

by road except the services of (i) a goods transportation agency; or (ii) a courier agency

by aircraft or vessel from a place outside India up to the customs station of clearance in India; or

by inland waterways.

##### **4.16.1 Are all services provided by goods transport agency excluded from the negative list?**

Yes. However, there are separate exemptions 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.

##### **4.16.2 Are goods transport agencies liable to pay tax in all cases or are provisions relating to reverse charge also applicable after introduction of negative list?**

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

##### **4.16.3 Some transporters under-take door-to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely delivery. Whether such 'Express cargo service' is excluded as courier agency service under this negative list entry?**

"Courier" has been defined in section 65B as any person engaged in door-to-door delivery of time sensitive documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles. The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency.

Hence, the said service is excluded from the negative list entry relating to transportation of goods by road.

##### **4.16.4 Whether services provided by 'angadia' are liable to service tax as a courier service?**

'Angadia' undertakes delivery of documents, goods or articles received from a customer to another person for a consideration. Therefore, 'angadias' are covered within the definition of a 'courier' and services provided by angadia are liable to service tax.

**4.16.5 Are the following services of transportation of goods covered in the negative list entry?**

<b>Nature of service relating to transportation of goods</b>	<b>Whether covered in the negative list entry?</b>
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

**4.16.6 Are services provided as agents for inland waterways covered by this entry?**

No. these are in the nature of services used for providing the negative list entry service of transport of goods on inland waterways and would not be covered by application of the rule for interpretation where services are specified by way of description contained in clause (1) of section 66F of the Act. (for guidance on this rule please refer to **Guidance Note 9**)

**4.16.7 If transportation of goods takes place from Delhi to Jammu by road then how would the taxability of such transportation be determined considering that Jammu is located in at a place outside taxable territory?**

Please refer to Guidance note 5 relating to **Place of Provision of Services**.

4.17 Funeral, burial, crematorium or mortuary services including transportation of the deceased

This negative list entry is self-explanatory.

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## 5.1 Introduction

### 5.1.1 What is the relevance of the ‘Place of Provision of Services Rules, 2012’?

The ‘Place of Provision of Services Rules, 2012’ specify the manner to determine the taxing jurisdiction for a service. Hitherto, the task of identifying the taxing jurisdiction was largely limited in the context of import or export of services. For this purpose rules were formulated which handled the subject of place of provision of services somewhat indirectly, confining to define the circumstances in which a provision of service would constitute import or export.

The new rules will, on the other hand, determine the place where a service shall be deemed to be provided, in terms of section 66C of the Finance Act, 2012, read with section 94 (hhh) of Chapter V of the Finance Act, 1994. Under Section 66B, a service is taxable only when, inter alia, it is “provided (or agreed to be provided) in the taxable territory”. Thus, the taxability of a service will be determined based on the “**place of its provision**”. The ‘Place of Provision of Services Rules, 2012’ will replace the ‘Export of Services, Rules, 2005’ and ‘Taxation of Services (Provided from outside India and received in India) Rules, 2006.

### 5.1.2 For whom are these rules meant?

These rules are primarily meant for persons who deal in cross-border services. They will also be equally applicable for those who have operations with suppliers or customers in the state of Jammu and Kashmir.

Additionally service providers operating within India from multiple locations, without having centralized registration will find them useful in determining the precise taxable jurisdiction applicable to their operations. The rules will be equally relevant for determining services that are wholly consumed within a SEZ, to avail the outright exemption.

### 5.1.3 What is the basic philosophy of these rules?

The essence of indirect taxation is that a service should be taxed in the jurisdiction of its consumption. This principle is more or less universally applied. In terms of this principle, exports are not charged to tax, as the consumption is elsewhere, and services are taxed on their importation into the taxable territory.

However, this determination is not easy. Services could be provided by a person located at one location, actually performed at another while being delivered to a person located at a third location, and occasionally actually consumed at a third location or over a larger geographical territory, falling in more than one taxable jurisdiction. For example a person located in Mumbai may buy a ticket on internet from a service provider located outside India for a journey from Delhi to London. On other occasions the exact location of service recipient itself may not be available e.g. services supplied electronically. As a result it is necessary to lay down rules determining the exact place of provision, while ensuring a certain level of harmonization with international practices in order to avoid both the double taxation as well as double non-taxation of services.

It is also a common practice to largely tax services provided by business to other business entities, based on the location of the customers and other services from business to consumers based on the location of the service provider. Since the determination in terms of above principle is not easy, or sometimes not practicable, nearest proxies are adopted to provide specificity in the interpretation as well as application of the law.

## 5.2 Basic Framework

### 5.2.1 How will a person determine the taxability of a service in terms of these rules?

As stated earlier, in terms of section 66B, a service is taxable only when, inter alia, it is “provided (or agreed to be provided) in the taxable territory”. Thus, the taxability of a service will be determined based on the place of its provision. For determining the taxability of a service, therefore, one needs to ask the following questions sequentially:-

Which rule applies to the service provided specifically? In case more than one rules apply equally, which of these come later in the order given in the rules?

What is the place of provision of the service in terms of the above rule?

Is the place of provision in taxable territory? If yes, tax will be payable. If not, tax will not be payable.

Is the provider ‘located’ in the taxable territory? If yes, he will pay the tax.

If not, is the service receiver located in taxable territory? If yes, he may be liable to pay tax on reverse charge basis.

Is the service receiver an individual or government receiving services for a nonbusiness purpose, or a charity receiving services for a charitable activity? If yes, the same is exempted.

If not, he is liable to pay tax.

### 5.2.2 What is “taxable territory”? What is its significance?

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. whole of India excluding the state of Jammu and Kashmir. “Non-taxable territory” is defined in sub-section 35 ibid accordingly as the territory other than the taxable territory.

“India” is defined in sub-section 27 of section 65 B, as follows:

“India” means—

the territory of the Union of India as referred to in clauses (2) and (3) of article 1 of the Constitution;

its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;

the sea-bed and the subsoil underlying the territorial waters;

the air space above its territory and territorial waters; and

the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

The new charging section, section 66B, enables taxation of only such services as are provided in taxable territory. Thus services that are provided in a non-taxable territory are not chargeable to service tax.

### **5.2.3 What is the significance of “Location” of a Service Provider or Receiver for determining taxing jurisdiction?**

In terms of explanation (2) to sub-section 44 of section 65B, an establishment of a person outside the taxable territory is a person distinct from an establishment in a taxable territory. Thus, services provided from overseas are to be carefully judged whether they are being rendered by the establishment outside the taxable territory or within.

Similarly, from the taxpayer’s perspective the jurisdiction of the field formation, which is relevant for compliance with registration formalities, filing of returns, refund claims etc. by the person liable to pay tax (provider or receiver as the case may be), will be the “location” as determined in terms of these rules.

### **5.2.4 How will such “location” be determined?**

The location of a service provider or receiver (as the case may be) is to be determined by applying the following steps sequentially:

A. where the service provider or receiver has obtained only one registration, whether centralized or otherwise, the premises for which such registration has been obtained; B. where the service provider or receiver is not covered by A above:

the location of his business establishment; or

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;

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

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 location is the place where the service is “used” or “consumed”.

Flow Diagram F1 at the end of this section illustrates the manner of determination of location. **5.2.5 What is the meaning of “business establishment”?**

‘Business establishment’ is the place where the essential decisions concerning the general management of the business are adopted, and where the functions of its central administration are carried out. This could be the head office, or a factory, or a workshop, or shop/ retail outlet. Most significantly, there is only one business establishment that a service provider or receiver can have.

### **5.2.6 What is the meaning of a “fixed establishment”?**

A “fixed establishment” is a place (other than the business establishment) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to provide the services that are to be supplied by it, or to enable it to receive and use the services supplied to it for its own needs.

Temporary presence of staff by way of a short visit at a place cannot be called a fixed establishment. Also, the number of staff at a location is not important. What is relevant is the adequacy of the arrangement (of human and technical resources), to carry out an activity for a consideration, or to receive and use a service supplied. Similarly, it will be important to evaluate the permanence of the arrangement i.e. whether it is capable of executing the task.

For further guidance on when a fixed establishment of a service receiver would be treated as “location”, please see para 5.3.4.

### **5.2.7 How will the establishment “most directly concerned with the supply” be determined?**

This will depend on the facts and supporting documentation, specific to each case. The documentation will include the following:-

the contract(s) between the service provider and receiver;

where there are no written contracts, any written account (documents, correspondence/e-mail etc) between parties which sets out in detail their understanding of the oral contract;

in particular, for suppliers, from which establishment the services are actually provided;

in particular, for receivers, at which establishment the services are actually consumed, effectively used or enjoyed;

details of how the business fits into any larger corporate structure;

the establishment whose staff is actually involved in the execution of the job;

performance agreements (which may be indicative both of the substance and actual nature of work performed at a particular establishment);

Thus , normally in the case of multiple establishments of a person, it will be the establishment that actually provides, or receives (i. e. uses or consumes), a service that would be treated as ‘directly concerned’ with the provision of service, notwithstanding the contractual position, or invoicing or payment. For further guidance in this regard, please see section 5.3.4.

#### **Illustration 1**

A business has its headquarters in India, and branches in London, Dubai, Singapore and New York. Its business establishment is in India.

#### **Illustration 2**

An overseas business house sets up offices with staff in India to provide services to Indian customers. Its fixed establishment is in India.

### Illustration 3

A company with a business establishment abroad buys a property in India which it leases to a tenant. The property by itself does not create a fixed establishment. If the company sets up an office in India to carry on its business by managing the property, this will create a fixed establishment in India.

### Illustration 4

A company is incorporated in India, but provides its services entirely from Singapore. The location of this service provider is Singapore, being the place where the establishment most directly concerned with the supply is located.

#### **5.2.8 What does “usual place of residence” mean?**

The usual place of residence, in case of a body corporate, has been specified as the place where it is incorporated or otherwise legally constituted.

The usual place of residence of an individual is the place (country, state etc) where the individual spends most of his time for the period in question. It is likely to be the place where the individual has set up his home, or where he lives with his family or is in full time employment. Individuals are not treated as belonging in a country if they are short term, transitory visitors (for example if they are visiting as tourists, or to receive medical treatment or for a short term educational course). An individual cannot have more than one usual place of residence.

In addition, in the case of telecommunication services, it has been prescribed that the usual place of residence of the receiver shall be the billing address. This in effect means the address that is available in the records of the service provider for billing the receiver of the telecommunication service. This provision will be applicable to individual customers (generally referred to as subscribers) of a telecommunication service, who are provided a subscriber identification module (commonly referred to as SIM card, which may be post-paid or prepaid) and a unique identification number (10-digit or 8-digit, as the case may be) by the service provider.

### 5.3 Main Rule- Rule 3- Location of the Receiver

#### **5.3.1 What is the implication of this Rule?**

The main rule or the default rule provides that a service shall be deemed to be provided where the receiver is located.

The main rule is applied when none of the other later rules apply (by virtue of rule 14 governing the order of application of rules- see para 5.14 of this guidance paper). In other words, if a service is not covered by an exception under one of the later rules, and is consequently covered under this default rule, then the receiver's location will determine whether the service is leviable to tax in the taxable territory.

The principal effect of the Main Rule is that:-



Where the location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory and service tax will be payable.

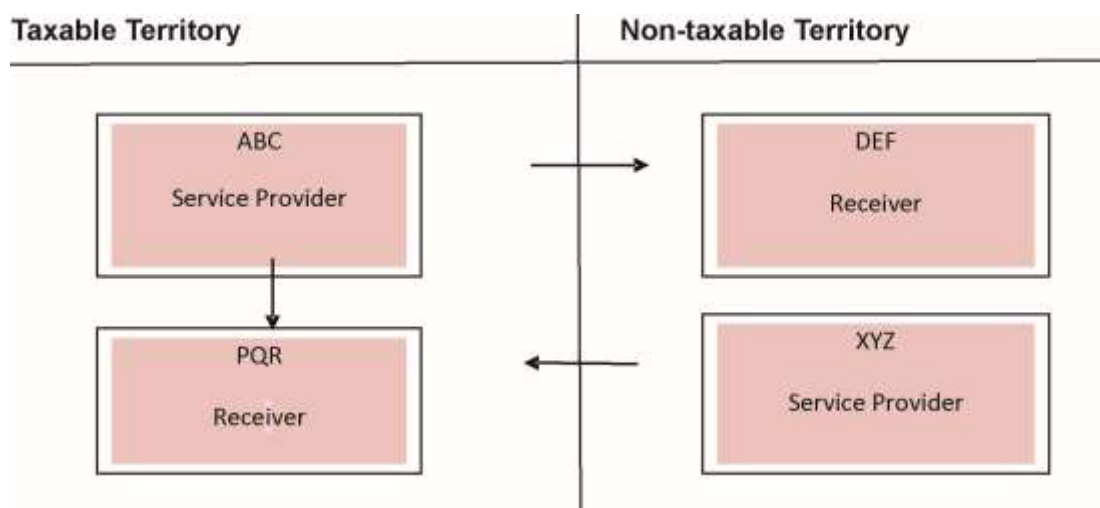
However if the receiver is located outside the taxable territory, no service tax will be payable on the said service.

### 5.3.2 If the place of provision of a taxable service is the location of service receiver, who is the person liable to pay tax on the transaction?

Service tax is normally required to be paid by the provider of a service, except where he is located outside the taxable territory and the place of provision of service is in the taxable territory.

Where the provider of a service is located outside the taxable territory, the person liable to pay service tax is the receiver of the service in the taxable territory, unless of course, the service is otherwise exempted.

Following illustration will make this clear:-



A company ABC provides a service to a receiver PQR, both located in the taxable territory. Since the location of the receiver is in the taxable territory, the service is taxable. Service tax liability will be discharged by ABC, being the service provider and being located in taxable territory.

However, if ABC were to supply the same service to a recipient DEF located in non-taxable territory, the provision of such service is not taxable, since the receiver is located outside the taxable territory.

If the same service were to be provided to PQR (located in taxable territory) by an overseas provider XYZ (located in non-taxable territory), the service would be taxable, since the recipient is located in the taxable territory. However, since the service provider is located in a nontaxable territory, the tax liability would be discharged by the receiver, under the reverse charge principle (also referred to as "tax shift").

### 5.3.3 Who is the service receiver?

Normally, the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

Illustration

A lady leaves her car at a service station for the purpose of servicing. She asks her chauffeur to collect the car from the service station later in the day, after the servicing is over. The chauffeur makes the payment on behalf of the lady owner and collects the car. Here the lady is the 'person obliged to make the payment' towards servicing charges, and therefore, she is the receiver of the service.

**5.3.4 What would be the situation where the payment for a service is made at one location (say by the headquarters of a business) but the actual rendering of the service is elsewhere (i.e. a fixed establishment)?**

Occasionally, a person may be the person liable to make payment for the service provided on his behalf to another person. For instance, the provision of a service may be negotiated at the headquarters of an entity by way of centralized sourcing of services whereas the actual provision is made at various locations in different taxing jurisdictions (in the case of what is commonly referred to as a multi-locational entity or MLE). Here, the central office may act only as a facilitator to negotiate the contract on behalf of various geographical establishments. Each of the geographical establishments receives the service and is obligated to make the payment either through headquarters or sometimes directly. When the payment is made directly, there is no confusion. In other situations, where the payment is settled either by cash or through debit and credit note between the business and fixed establishments, it is clear that the payment is being made by a geographical location. Wherever a fixed establishment bears the cost of acquiring, or using or consuming a service through any internal arrangement (normally referred to as a "recharge", "reallocation", or a "settlement"), these are generally made in accordance with corporate tax or other statutory requirements. These accounting arrangements also invariably aid the MLE's management in budgeting and financial performance measurement.

Various accounting and business management systems are generally employed to manage, monitor and document the entire purchasing cycle of goods and services (such as the ERP Enterprise Resource Planning System). These systems support and document the company processes, including the financial and accounting process, and purchasing process. Normally, these systems will provide the required information and audit trail to identify the establishment that uses or consumes a service.

It should be noted that in terms of proviso to section 66B, the establishments in a taxable and non-taxable territory are to be treated as distinct persons. Moreover, the definition of "location of the receiver" clearly states that "where the services are "used" at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service" will be the location. Thus, the taxing jurisdiction of service, which is provided under a 'global framework agreement' between two multinational companies with the business establishment located outside the taxable territory, but which is used or consumed by a fixed establishment located in the taxable territory, will be the taxable territory.

Illustration

The following example illustrates the above, by comparing the place of provision of services rendered under a Global Agreement<sup>1</sup> vis-à-vis a Global Framework Agreement<sup>2</sup>.

is a firm with its manufacturing unit and business establishment located in the taxable territory A. It has got two other manufacturing plants located in countries X and Y (say, AAA-X and AAA-Y respectively). AAA wishes to obtain IT services for a new production process for its three manufacturing plants in the region.

is an IT firm located in the taxable territory (location of business establishment). BBBLtd also has fixed establishments (subsidiaries) located in country X (say BBB-X) and in country Y (say, BBB- Y).

AAA engages BBB for meeting its IT service requirement.

### **Scenario 1 [See Flow Diagram F 2 at the end of this section]**

enters into a **Global (centralized purchasing) agreement** with BBB for provision of IT services for the whole group. Following are the different transactions under which services are provided:-

Under the global agreement, some component of IT service is provided by BBB to AAA in country A (say, Transaction 1).

To meet the requirements of providing IT solutions specific to the plants AAA-X and AAA-Y in countries X and Y, BBB enters into agreements with its subsidiaries BBB-

X (in country X) and BBB-Y (in country Y), under which they provide IT services to

(say, Transaction 2 and Transaction 3). Though these services are provided by BBB-X and BBB-Y to BBB, these are rendered as under:

- By BBB-X to AAA-X (in country X)- under transaction 2, and

c) AAA enters into separate agreements with AAA-X and AAA-Y, under which AAA Ltd provides IT services to them (transaction 4 and transaction 5).

The transactions and provision of service under each are illustrated in the Flow diagram F2 titled 'Scenario1' at the end of this section.

### **Scenario 2 [See Flow Diagram F 3 at the end of this section]**

AAA enters into a **Framework Agreement** with BBB for provision of IT services for the whole group. The Framework agreement covers the broad contours of supply between the two parties, payment milestones, obligations relating to confidentiality, penalty for default, limitations of liability and warranties etc, which would apply as and when group companies enter into separate agreements, in accordance with the terms envisaged in the framework agreement. BBB-X and BBB-Y could then enter into separate and independent business agreements with AAA-X and AAA-Y, in countries X and Y

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<sup>1</sup> A 'Global Contract or Agreement' is between two parent companies for provision of services from one to the other, where actual provision of services is to be made to subordinate offices of the recipient company in different tax jurisdictions.

<sup>2</sup> A 'Global Framework Agreement' is between two parent companies for provision of services, but here, the 'framework agreement' only specifies the broad terms of the agreement i.e. fees, terms and conditions, the list of recipient branches/offices or even the details of provision of services to be made. The subsidiaries in different locations then enter into separate and independent business agreements, for provision of services and payments.

respectively, for provision of IT services. There are four agreements, but only three transactions involving provision of services, as indicated in the Flow diagram F3- Scenario 2 at the end of this section.

### **5.3.5 What is the place of provision where the location of receiver is not ascertainable in the ordinary course of business?**

Generally, in case of a service provided to a person who is in business, the provider of the service will have the location of the recipient's registered location, or his business establishment, or his fixed establishment etc, as the case may be. However, in case of certain services (which are not covered by the exceptions to the main rule), the service provider may not have the location of the service receiver, in the ordinary course of his business. This will also be the case where a service is provided to an individual customer who comes to the premises of the service provider for availing the service and the provider has to, more often than not, rely on the declared location of the customer. In such cases the place of provision will be the location of the service provider. It may be noted that the service provider is not required to make any extraordinary efforts to trace the address of the service receiver. The address should be available in the ordinary course of business.

In case of certain specified categories of services, the place of provision shall be the place where the services are actually performed. These are discussed in the following paragraphs.

#### 5.4 Rule 4- Performance based Services

##### **5.4.1 What are the services that are provided “in respect of goods that are made physically available, by the receiver to the service provider, in order to provide the service”?- sub-rule (1):**

Services that are related to goods, and which require such goods to be made available to the service provider or a person acting on behalf of the service provider so that the service can be rendered, are covered here. The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed. Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/ analysis of goods, dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer. Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys.

##### **5.4.2 What is the implication of the proviso to sub-rule (1)?**

The proviso to this rule states as follows:-

“Provided further that where such services are provided from a remote location by way of electronic means, the place of provision shall be the location where goods are situated at the time of provision of service.”

In the field of information technology, it is not uncommon to provide services in relation to tangible goods located distantly from a remote location. Thus the actual place of performance of the service could be quite different from the actual location of the tangible goods. This proviso requires that the place of provision shall be the actual location of the goods and not the place of performance, which in normal situations is one and the same.

#### **5.4.3 What are the services that are provided “to an individual ... which require the physical presence of the receiver ... with the provider for provision of the service.”?sub-rule (2)**

Certain services like cosmetic or plastic surgery, beauty treatment services, personal security service, health and fitness services, photography service (to individuals), internet café service, classroom teaching, are examples of services that require the presence of the individual receiver for their provision. As would be evident from these examples, the nature of services covered here is such as are rendered in person and in the receiver’s physical presence. Though these are generally rendered at the service provider’s premises (at a cosmetic or plastic surgery clinic, or beauty parlor, or health and fitness centre, or internet café), they could also be provided at the customer’s premises, or occasionally while the receiver is on the move (say, a personal security service; or a beauty treatment on board an aircraft).

#### **5.4.4 What is the significance of “..in the physical presence of an individual, whether represented either as the service receiver or a person acting on behalf of the receiver” in this rule?**

This implies that while a service in this category is capable of being rendered only in the presence of an individual, it will not matter if, in terms of the contractual arrangement between the provider and the receiver (formal or informal, written or oral), the service is actually rendered by the provider to a person other than the receiver, who is acting on behalf of the receiver.

Illustration

A modelling agency contracts with a beauty parlour for beauty treatment of say, 20 models. Here again is a situation where the modelling agency is the receiver of the service, but the service is rendered to the models, who are receiving the beauty treatment service on behalf of the modelling agency. Hence, notwithstanding that the modelling agency does not qualify as the individual receiver in whose presence the service is rendered, the nature of the service is such as can be rendered only to an individual, thereby qualifying to be covered under this rule.

### **5.5 Rule 5- Location of Immovable Property**

In the case of a service that is ‘directly in relation to immovable property’, the place of provision is where the immovable property (land or building) is located, irrespective of where the provider or receiver is located.

#### **5.5.1 What is “immovable property”?**

“Immovable Property” has not been defined in the Finance Act, 1994. However, in terms of section 4 of the General Clauses Act, 1897, the definition of immovable property provided in sub-section 3 (26) of the General Clauses Act will apply, which states as under:

“Immovable Property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.”

It may be noted that the definition is inclusive and thus properties such as buildings and fixed structures on land would be covered by the definition of immovable property. The property must be attached to some part of earth even if underwater.

### **5.5.2 What are the criteria to determine if a service is ‘directly in relation to’ immovable property located in taxable territory?**

Generally, the following criteria will be used to determine if a service is in respect of immovable property located in the taxable territory:

The service consists of lease, or a right of use, occupation, enjoyment or exploitation of an immovable property;

the service is physically performed or agreed to be performed on an immovable property (e.g. maintenance) or property to come into existence (e.g. construction);

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

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

the determination of the title to the property.

There must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property. For example, a legal firm’s general opinion with respect to the capital gains tax liability arising from the sale of a commercial property in India is basically advice on taxation legislation in general even though it relates to the subject of an immovable property. This will not be treated as a service in respect of the immovable property.

### **5.5.3 Examples of land-related services**

i) Services supplied in the course of construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work; ii) Renting of immovable property;

Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster.

Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed.

The surveying (such as seismic, geological or geomagnetic) of land or seabed. vi) Legal services such as dealing with applications for planning permission.

Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts.

The supply of hotel accommodation or warehouse space.

#### **5.5.4 What if a service is not directly related to immovable property?**

The place of provision of services rule applies only to services which relate directly to specific sites of land or property. In other words, the immovable property must be clearly identifiable to be the one from where, or in respect of which, a service is being provided. Thus, there needs to be a very close link or association between the service and the immovable property. Needless to say, this rule does not apply if a provision of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.

For example, the services of an architect contracted to design the landscaping of a particular resort hotel in Goa would be land-related. However, if an interior decorator is engaged by a retail chain to design a common décor for all its stores in India, this service would not be land-related. The default rule i.e. Rule 3 will apply in this case.

#### **5.5.5 Examples of services which are not land-related**

Repair and maintenance of machinery which is not permanently installed. This is a service related to goods.

Advice or information relating to land prices or property markets because they do not relate to specific sites.

Land or Real Estate Feasibility studies, say in respect of the investment potential of a developing suburb, since this service does not relate to a specific property or site.

Services of a Tax Return Preparer in simply calculating a tax return from figures provided by a business in respect of rental income from commercial property.

Services of an agent who arranges finance for the purchase of a property.

### **5.6 Rule 6- Services relating to Events**

#### **5.6.1 What is the place of provision of services relating to events?**

Place of provision of services provided by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational, entertainment event, or a celebration, conference, fair, exhibition, or

any other similar event and of services ancillary to such admission, shall be the place where the event is held.

### **5.6.2 What are the services that will be covered in this category?**

Services in relation to admission as well as organization of events such as conventions, conferences, exhibitions, fairs, seminars, workshops, weddings, sports and cultural events are covered under this Rule.

#### Illustration 1

A management school located in USA intends to organize a road show in Mumbai and New Delhi for prospective students. Any service provided by an event manager, or the right to entry (participation fee for prospective students, say) will be taxable in India.

#### Illustration 2

An Indian fashion design firm hosts a show at Toronto, Canada. The firm receives the services of a Canadian event organizer. The place of provision of this service is the location of the event, which is outside the taxable territory. Any service provided in relation to this event, including the right to entry, will be non-taxable.

### **5.6.3 What is a service ancillary organization or admission to an event?**

Provision of sound engineering for an artistic event is a prerequisite for staging of that event and should be regarded as a service ancillary to its organization. A service of hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission.

### **5.6.4 What are event-related services that would be treated as not ancillary to admission to an event?**

A service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event.

## 5.7 Rule 7- Part performance of a service at different locations

### **5.7.1 What does this Rule imply?**

This Rule covers situations where the actual performance of a service is at more than one location, and occasionally one (or more) such locations may be outside the taxable territory.

This Rule states as follows:-

“Where any service stated in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided”.

The following example illustrates the application of this Rule:-

#### Illustration 1



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

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

This rule is, however, not intended to capture insignificant portion of a service rendered in any part of the taxable territory like mere issue of invoice, processing of purchase order or recovery, which are not by way of service actually performed on goods.

It is clarified that this rule is applicable in performance-based services or location-specific services (immovable property related or event-linked). Normally, such services when provided in a non-taxable territory would require the presence of separate establishments in such territories. By virtue of an explanation of sub-clause (44) of section 65B, they would constitute distinct persons and thus it would be legitimate to invoice the services rendered individually in the two territories.

5.8 Rule 8- Services where the Provider as well as Receiver is located in Taxable Territory

#### **5.8.1 What is the place of provision of a service where the location of the service provider and that of the service receiver is in the taxable territory?**

The place of provision of a service, which is provided by a provider located in the taxable territory to a receiver who is also in the taxable territory, will be the location of the receiver.

#### **5.8.2 What is the implication of this Rule?**

This Rule covers situations where the place of provision of a service provided in the taxable territory may be determinable to be outside the taxable territory, in terms of the application of one of the earlier Rules i.e. Rule 4 to 6, but the service provider, as well as the service receiver, are located in the taxable territory.

The implication of this Rule is that in all such cases, the place of provision will be deemed to be in the taxable territory, notwithstanding the earlier rules. The presence of both the service provider and the service receiver in the taxable territory indicates that the place of consumption of the service is in the taxable territory. Services rendered, where both the provider and receiver of the service are located outside the taxable territory, are now covered by the mega exemption.

Illustration

A helicopter of Pawan Hans Ltd (India based) develops a technical snag in Nepal. Say, engineers are deputed by Hindustan Aeronautics Ltd, Bangalore, to undertake repairs at the site in Nepal. But for this rule, Rule 4, sub-rule (1) would apply in this case, and the place of provision would be Nepal i.e. outside the taxable territory. However, by application of Rule 7, since the service provider, as well as the receiver, are located in the taxable territory, the place of provision of this service will be within the taxable territory.

5.9 Rule 9- Specified services- Place of provision is location of the service provider

### **5.9.1 What are the specified services where the place of provision is the location of the service provider?**

Following are the specified services where the place of provision is the location of the service provider:-

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

### **5.9.2 What is the meaning of “account holder”? Which accounts are not covered by this rule?**

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

### **5.9.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?**

Following are examples of services that are provided by a banking company or financial institution to an “account holder”, in the ordinary course of business:-

services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;

transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

### **5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?**

Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), in the ordinary course of business:-

i) financial leasing services including equipment leasing and hire-purchase; ii) merchant banking services;

Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;

asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;

advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy; vi) banker to an issue service.

In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise.

#### **5.9.5 What are “Online information and database access or retrieval services”?**

“Online information and database access or retrieval services” are services in relation to online information and database access or retrieval or both, in electronic form through computer network, in any manner. Thus, these services are essentially delivered over the internet or an electronic network which relies on the internet or similar network for their provision. The other important feature of these services is that they are completely automated, and require minimal human intervention.

Examples of such services are:-

online information generated automatically by software from specific data input by the customer, such as web-based services providing trade statistics, legal and financial data, matrimonial services, social networking sites;

digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports; iii) Web-based services providing access or download of digital content.

The following services will not be treated as “online information and database access or retrieval services”:-

Sale or purchase of goods, articles etc over the internet;

Telecommunication services provided over the internet, including fax, telephony, audio conferencing, and videoconferencing;

A service which is rendered over the internet, such as an architectural drawing, or management consultancy through e-mail;

Repair of software, or of hardware, through the internet, from a remote location;

Internet backbone services and internet access services.

#### **5.9.6 What are “Intermediary Services”?**

Generally, an “intermediary” is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:

the supply between the principal and the third party; and

the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

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

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

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

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

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

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

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

i) Travel Agent (any mode of travel) ii) Tour Operator iii) Commission agent for a service [an agent for buying or selling of goods is excluded] iv) Recovery Agent

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

Illustration

A freight forwarder arranges for export and import shipments. There could be two possible situations here- one when he acts on his own account, and the other, when he acts as an intermediary.

When the freight forwarder acts on his own account (say, for an export shipment)

A freight forwarder provides domestic transportation within taxable territory (say, from the exporter’s factory located in Pune to Mumbai port) as well as international freight service (say, from Mumbai port to the international destination), under a single contract, on his own account (i.e. he buys-in and sells freight transport as a principal), and charges a consolidated amount to the exporter. This is a service of transportation of goods for which the place of supply is the destination of goods. Since the destination of goods is outside taxable territory, this service will not attract service tax. Here, it is presumed that ancillary freight services (i.e. services ancillary to transportation- loading, unloading, handling etc) are “bundled” with the principal service owing to a single contract or a single price (consideration).

On an import shipment with similar conditions, the place of supply will be in the taxable territory, and so the service tax will be attracted.

When the freight forwarder acts as an intermediary

Where the freight forwarder acts as an intermediary, the place of provision will be his location. Service tax will be payable on the services provided by him. However, when he provides a service to an exporter of goods, the exporter can claim refund of service tax paid under notification for this purpose.

Similarly, persons such as call centres, who provide services to their clients by dealing with the customers of the client on the client's behalf, but actually provided these services on their own account, will not be categorized as intermediaries.

### **5.9.7 What is the service of “hiring of means of transport”?**

The services of providing a hire or lease, without the transfer of right to use (explained in guide at point 6.6), is covered by this rule. Normally the following will constitute means of transport:-

i) Land vehicles such as motorcars, buses, trucks; ii) Vessels; iii) Aircraft; iv) Vehicles designed specifically for the transport of sick or injured persons; v) Mechanically or electronically propelled invalid carriages; vi) Trailers, semi-trailers and railway wagons.

The following are not 'means of transport':-

i) Racing cars; ii) Containers used to store or carry goods while being transported; iii) Dredgers, or the like.

### **5.9.8 What if I provide a service of hiring of a fleet of cars to a company on an annual contract? What will be place of provision of my service if my business establishment is located in New Delhi, and the company is located in Faridabad (Haryana)?**

This Rule covers situations where the hiring is for a period of upto one month. Since hiring period is more than one month, this sub-rule cannot be applied to the situation. The place of provision of your service will be determined in terms of Rule 3 i.e. receiver location, which in this case is Faridabad (Haryana).

## **5.10 Rule 10- Place of Provision of a service of transportation of goods**

### **5.10.1 What are the services covered under this Rule?**

Any service of transportation of goods, by any mode of transport (air, vessel, rail or by a goods transportation agency), is covered here. However, transportation of goods by courier or mail is not covered here.

### **5.10.2 What is the place of provision of a service of transportation of goods?**

Place of provision of a service of transportation of goods is the place of destination of goods, except in the case of services provided by a Goods Transportation Agency in respect of transportation of goods by road, in which case the place of provision is the location of the person liable to pay tax (as determined in terms of rule 2(1)(d) of Service Tax Rules, 1994 (since amended).

#### **Illustration**

A consignment of cut flowers is consigned from Chennai to Amsterdam. The place of provision of goods transportation service will be Amsterdam (outside India, hence not liable

to service tax). Conversely, if a consignment of crystal ware is consigned from Paris to New Delhi, the place of provision will be New Delhi.

### **5.10.3 What does the proviso to this Rule imply?**

The proviso to this Rule states as under:-

“Provided that the place of provision of services of transportation of goods by goods transportation agency shall be the location of the person liable to pay tax.”

Sub-rule 2(1)(d) of Service Tax Rules, 1994 provides that where a service of transportation of goods is provided by a ‘goods transportation agency’, and the consignor or consignee is covered under any of the specified categories prescribed therein, the person liable to tax is the person who pays, or is liable to pay freight (either himself or through his agent) for the transportation of goods by road in a goods carriage. If such person is located in non-taxable territory, then the person liable to pay tax shall be the service provider.

#### **Illustration 1**

A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Bhopal, Madhya Pradesh. Say, XYZ is a registered assessee and is also the person liable to pay freight and hence person liable to pay tax, in this case. Here, the place of provision of the service of transportation of goods will be the location of XYZ i.e. Haryana.

#### **Illustration 2**

A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Jammu (non-taxable territory). Say, as per mutually agreed terms between ABC and XYZ, the dealer in Jammu is the person liable to pay freight. Here, in terms of amended provisions of rule 2(1)(d), since the person liable to pay freight is located in non-taxable territory, the person liable to pay tax will be ABC. Accordingly, the place of provision of the service of transportation of goods will be the location of ABC i.e. Delhi.

## **5.11 Rule 11- Passenger Transportation Services**

### **5.11.1 What is the place of provision of passenger transportation services?**

The place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey.

### **5.11.2 What does a “continuous journey” mean?**

A “continuous journey” means a journey for which:-

a single ticket has been issued for the entire journey; or

more than one ticket or invoice has been issued for the journey, by one serviceprovider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover in the journey

### 5.11.3 What is the meaning of a stopover? Do all stopovers break a continuous journey?

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

### 5.11.4 The Table below contains illustrations which explain the principle enunciated in this Rule.

Illustrations

S. No.	Journey	Place of Provision	Taxability
<b>Single Ticket (No stopover)</b>			
1	Mumbai-Delhi	Mumbai	Yes, Mumbai being the place of embarkation.
2	Mumbai-Delhi-Jaipur	Mumbai	Yes, Mumbai, being the place of embarkation for the continuous journey.
3	Mumbai-Delhi-London-Delhi-London	Mumbai	-do-
4	Delhi-London-New York-London-New York	Delhi	Yes, New Delhi, being the place of provision for continuous journey with single return ticket.
5	Delhi-London-New York	Delhi	-do-
6	New York-London-Delhi	New York	No, New York is place of provision for continuous journey with single return ticket.

S. No.	Journey	Place of Provision	Taxability
7	New York-London-DelhiMumbai-Delhi-LondonNew York	New York	-do-
8	Delhi-Jammu-Delhi	Delhi	Yes, Delhi is the place of provision for continuous journey.

9	Jammu-Delhi-Jammu	Jammu	No, Jammu is the place of provision for continuous journey with single return ticket
<b>More than one ticket for a journey (issued by a single service provider, or by a single agent, for more than one service providers)</b>			
1	(a) Delhi-Bangkok-Delhi (b) Bangkok-Bali-Bangkok	Delhi is place of provision for journey (a); Bangkok is place of provision for journey (b)	Journey (a) is taxable since place of provision is in taxable territory; Journey (b) is not taxable since place of provision is outside taxable territory.
2	(a) Delhi-New York-Delhi (b) New York-Boston-New York	Delhi is place of provision for journey (a); New York is place of provision for journey (b)	Journey (a) is taxable since place of provision is in taxable territory; Journey (b) is not taxable since place of provision is not in taxable territory.
3	(a) London-Delhi-London (b) Delhi-Chandigarh (c) Chandigarh-Amritsar (d) Amritsar-Delhi	London is place of provision for journey (a); Delhi is place of provision for journey (b); Chandigarh is place of provision for journey (c); Amritsar is place of provision for journey (d)	Journey (a) is not taxable since place of provision is outside taxable territory; Journeys (b), (c) and (d) are taxable since place of provision is in taxable territory.
4	(a) Delhi-Jammu (b) Jammu-Delhi	Delhi is place of provision for journey (a) Jammu is place of provision for journey (b)	Journey (a) is taxable since place of provision is in taxable territory. Journey (b) is not taxable since place of provision is outside taxable territory.
5	(a) Jammu-Delhi-Jammu (b) Delhi-Bangkok-Delhi	Jammu is place of provision for journey (a); Delhi is place of provision for journey (b)	Journey (a) is not taxable since place of provision is outside taxable territory for the continuous journey with single, return ticket. Journey (b) is taxable, since place of provision is in taxable territory for the journey with single, return ticket.
6	(a) Jammu-Delhi (b) Delhi-Bangkok-Delhi (c) Delhi-Lucknow (d) Lucknow-Jammu	Jammu is place of provision for journey (a); Delhi is place of provision for journey (b); Delhi is place of provision for journey (c); Lucknow is place of provision for journey (d)	Journey (a) is not taxable since place of provision is not in taxable territory; Journeys (b), (c) and (d) are taxable since place of provision is in taxable territory for each of these.

It may also be pertinent to mention that for flights originating from, or terminating in, the northeast region, though the place of provision will be determined in terms of this rule, there is an exemption for air transportation of passengers, 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. The examples in the table below illustrate some situations.

S. No.	Journey	Place of Provision	Taxability
<b>Single ticket (No stopover)</b>			
1	Dibrugarh-Kolkata-Mumbai	Dibrugarh is the place of provision	Journey is taxable, but no service tax is payable owing to the exemption.
2	Dibrugarh-Kolkata-Mumbai-Kolkata-Dibrugarh	Dibrugarh is the place of provision	Journey is taxable, but no service tax is payable owing to the exemption. Here it is relevant to note that the journey is against a single, return ticket.
3	Guwahati-Kolkata-Bangkok-Kolkata-Guwahati	Guwahati is the place of provision for the continuous journey	Place of provision being in the taxable territory, the service is taxable, but no service tax is payable owing to the exemption and journey is deemed continuous.
4	Kolkata-Guwahati-Kolkata	Kolkata is the place of provision for the continuous journey.	Place of provision being in the taxable territory, the service is taxable, but no service tax is payable owing to the exemption (the onward and return legs of journey terminate and originate in exempted territory respectively).
<b>More than one ticket for a journey (issued by a single service provider, or by a single agent, for more than one service providers)</b>			
1	(a) Bagdogra-Kolkata (b) Kolkata-Delhi	Place of provision for journey (a) is Bagdogra. Place of provision for journey (b) is Kolkata.	In these cases, generally, the passenger would be required to change aircraft after exiting the airport, and is required to obtain a fresh boarding pass for the next leg. This is deemed to be a stopover. Thus, journey (b) is taxable, and service tax is payable on leg (b).
2	(a) Guwahati-Kolkata-Guwahati (b) Kolkata-Bangkok-Kolkata	Each journey is deemed continuous based on the assumption that two single return tickets are purchased. For journey (a) place of provision is Guwahati, and for journey (b) place of provision is	Generally, in such cases, since separate return tickets have been purchased for the two journeys, after completing journey (a) the passenger will be required to disembark from the aircraft and complete check-in formalities for journey (b). Thus, the journey will not

		Kolkata.	be deemed to be continuous and place of provision for journey (b) will be Kolkata.
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## 5.12 Rule 12- Services provided on board conveyances

### 5.12.1 What are services provided on board conveyances?

Any service provided on board a conveyance (aircraft, vessel, rail, or roadways bus) will be covered here. Some examples are on-board service of movies/music/video/ software games on demand, beauty treatment etc, albeit only when provided against a specific charge, and not supplied as part of the fare.

### 5.12.2 What is the place of provision of services provided on board conveyances?

The place of provision of services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.

#### Illustration

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

If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg, then the place of provision will be Delhi (in the taxable territory, hence liable to tax).

## 5.13 Rule 13- Power to notify services or circumstances

### 5.13.1 What is the implication of this Rule?

This Rule states as follows:-

“In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.”

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

## 5.14 Rule 14- Order of application of Rules

### 5.14.1 What is the implication of this Rule?

Rule 14 provides that where the provision of a service is, prima facie, 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.

This Rule covers situations where the nature of a service, or the business activities of the service provider, may be such that two or more rules may appear equally applicable. Following illustrations will make the implications of this Rule clear:-

#### Illustration 1

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

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

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

#### Illustration 2

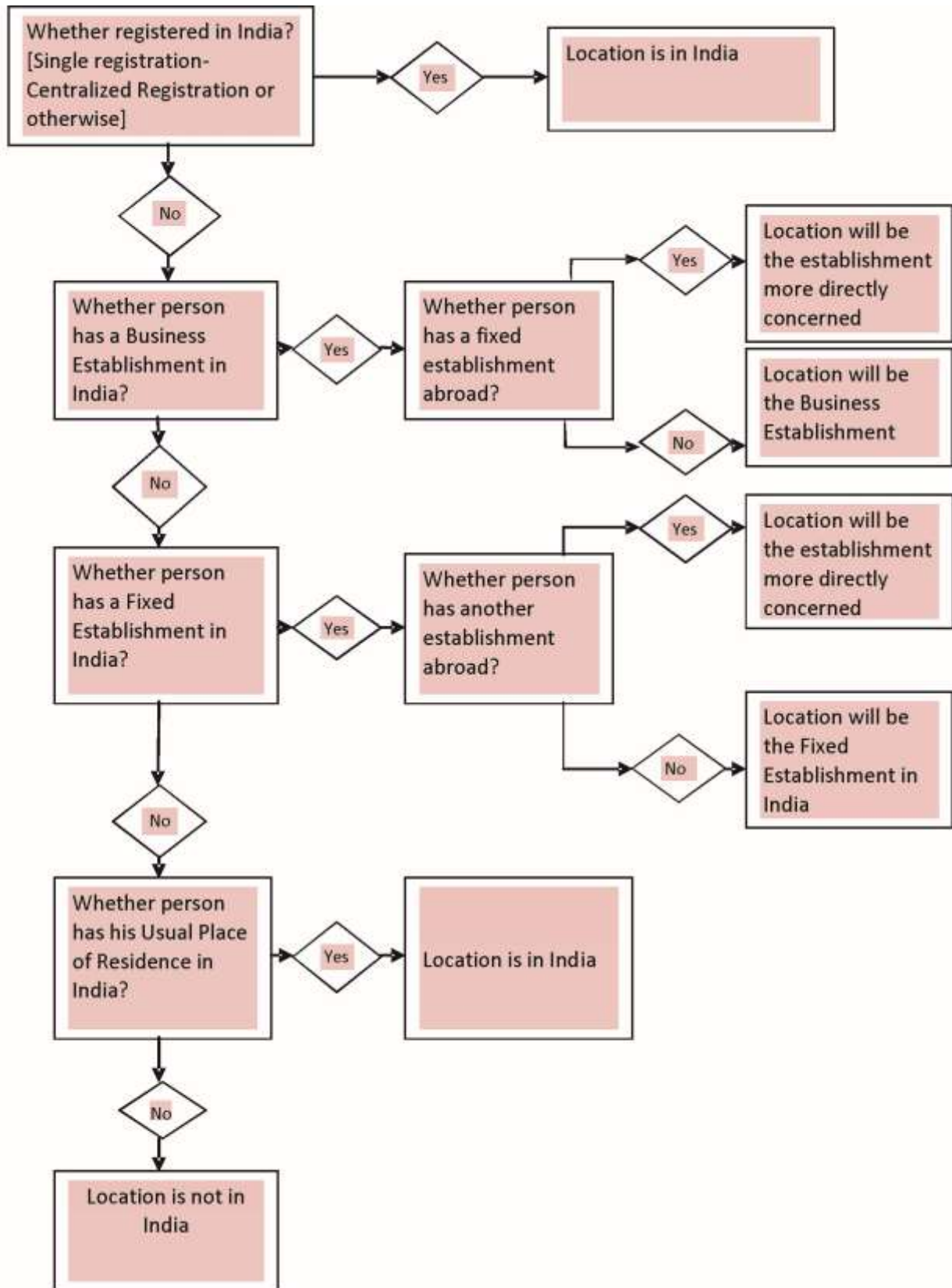
For the Ms Universe Contest planned to be held in South Africa, the Indian pageant (say, located in Mumbai) avails the services of Indian beauticians, fashion designers, videographers, and photographers. The service providers travel as part of the Indian pageant's entourage to South Africa. Some of these services are in the nature of personalized services, for which the place of provision would normally be the location where performed (Performance rule-Rule 4), while for others, under the main rule (Receiver location) the place of provision would be the location of receiver.

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

By application of Rule 15, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

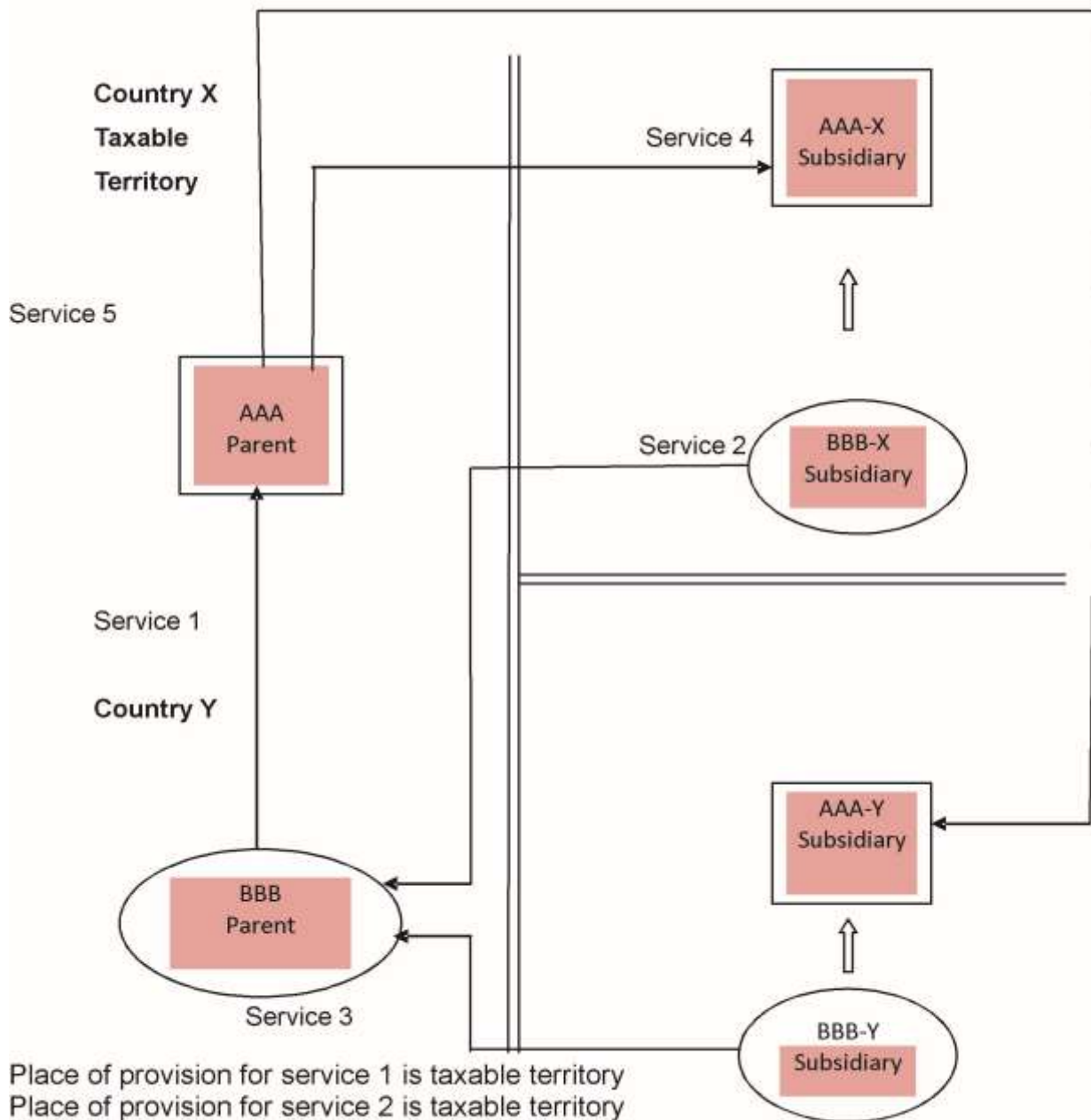
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### **FLOW DIAGRAM F1 (Refer para 5.2.4) HOW TO DETERMINE LOCATION?**



FLOW DIAGRAM F 2 (Refer para 5.3.4)

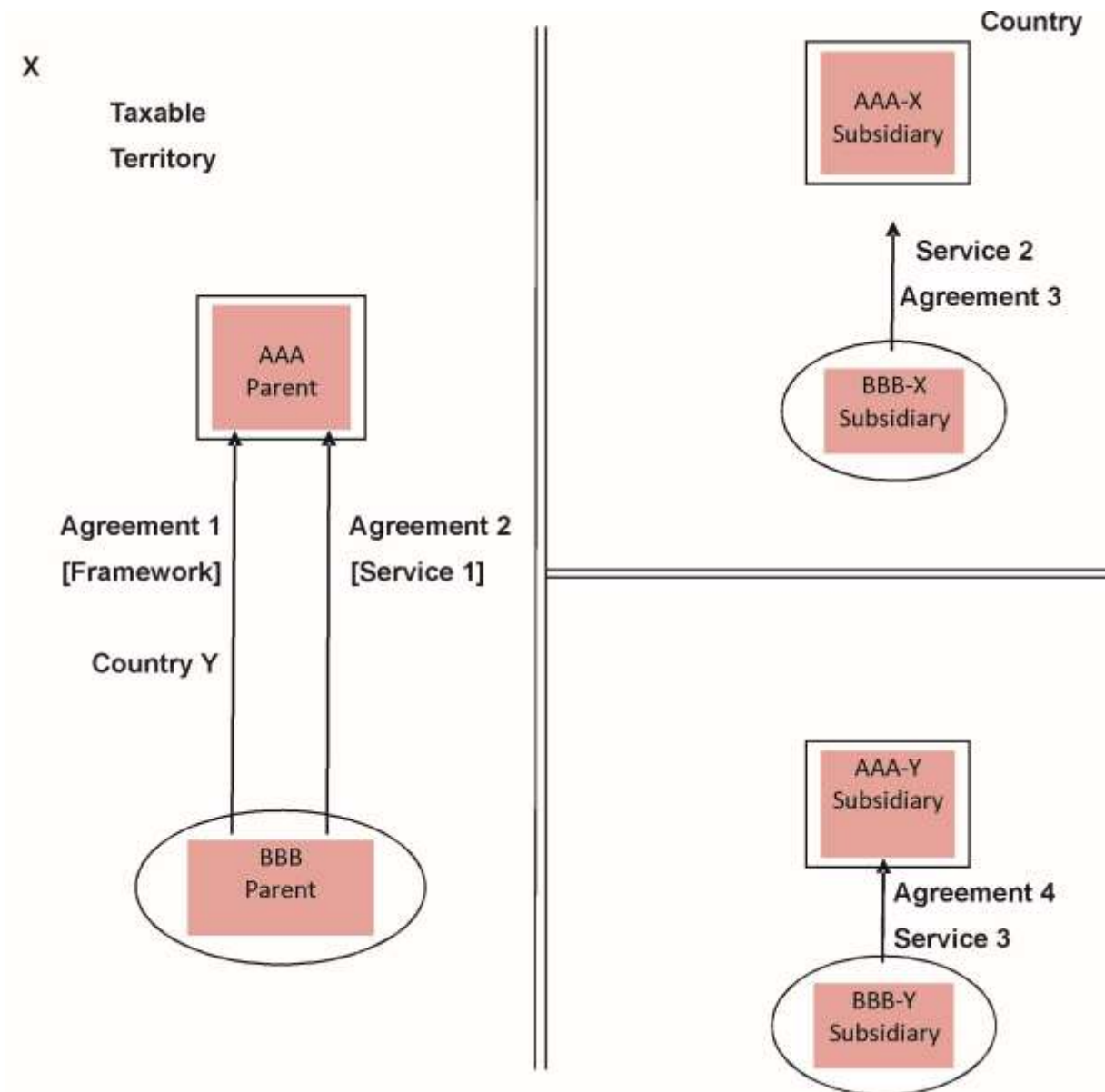
PROVISION OF SERVICES UNDER A 'GLOBAL AGREEMENT'- Scenario 1



Place of provision for service 1 is taxable territory  
 Place of provision for service 2 is taxable territory  
 Place of provision for service 3 is taxable territory  
 Place of provision for service 4 is country X  
 Place of provision for service 5 is country Y.

**FLOW DIAGRAM F 3 (Refer para 5.3.4)**

**PROVISION OF SERVICES UNDER 'FRAMEWORK AGREEMENT'- Scenario 2**



Agreement 1 is not transactional, has no consideration, and does not create a provision of service. Agreement 1 stipulates the terms and conditions which are activated only when the parties (i.e. group subsidiaries on either side) enter into separate and independent business agreements, in accordance with the terms specified in the framework agreement.

Under Agreement 2, service 1 is provided by BBB Ltd to AAA Ltd, and the place of provision of this service, under the main rule, is the location of the receiver i.e. within the taxable territory. Under Agreement 3, service 2 is provided by BBB-X to AAA-X, and the place of provision of this service, under the main rule, is country X i.e. outside the taxable territory. Under Agreement 4, service 3 is provided by BBB-Y to AAA-Y, and the place of provision of this service, again under the main rule, is country Y i.e. outside the taxable territory.

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Guidance Note 6 – Declared Services

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In the definition of 'service' contained in clause (44) of section 65B of the Act it has also been stated that service includes a declared service. The phrase 'declared service' is also defined in the said section as an activity carried out by a person for another for consideration and specified in section 66E of the Act. The following nine activities have been specified in section 66E:

renting of immovable property;

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;

temporary transfer or permitting the use or enjoyment of any intellectual property

right;

development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;

agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;

activities in relation to delivery of goods on hire purchase or any system of payment by instalments;

service portion in execution of a works contract;

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.

The above activities when carried out by a person for another for consideration would amount to provision of service. Most of these services are presently also being taxed except in so far as Sl. No.5 is concerned. It is clarified that they are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country.

### 6.1 Renting of Immovable Property

Renting has been defined in section 65B as "allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property"

#### **6.1.1 Is renting of all kinds of immovable properties taxable?**

No. Renting of certain kinds of immovable properties is specified in the negative list. These are –

renting of vacant land, with or without a structure incidental to its use, relating to agriculture. (Sl. no. (d) (iv) of Exhibit A1)

renting of residential dwelling for use as residence (Sl. No. (m) of Exhibit A1)

renting out of any property by the Reserve Bank of India

renting out of any property by a Government or a local authority to a non-business entity.

Renting of all other immovable properties would be taxable unless covered by an exemption (refer 6.1.2).

### 6.1.2 Are there any exemptions in respect of renting of immovable property?

Yes. These are:—

Threshold level exemption up to Rs. 10 lakh.

Renting of precincts of a religious place meant for general public.

Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent.

Renting to an exempt educational institution

### 6.1.3 Would permitting usage of a property for a temporary purpose like conduct of a marriage or any other social function be taxable?

Yes. As per definition allowing or permitting usage of immovable property, without transferring possession of such property, is also renting of immovable property.

### 6.1.4 Would activities referred to in column 1 of a table below be chargeable to service tax?

S. No.	Journey	Taxability
1.	Renting of property to an educational body	Exempted if provided to an educational institution for the purpose of education which is exempt from the levy of service tax; to others will be taxable.
2.	Renting of vacant land for animal husbandry or floriculture	Not chargeable to service tax as it is covered in the negative list entry relating to agriculture
3.	Permitting use of immovable property for placing vending/dispensing machines	Chargeable to service tax as permitting usage of space is covered in the definition of renting
4.	Allowing erection of a communication tower on a building for consideration.	Chargeable to service tax as permitting usage of space is covered in the definition of renting
5.	Renting of land or building for entertainment or sports	Chargeable to service tax as there is no specific exemption.
6.	Renting of theatres by owners to film distributors (including under a profitsharing arrangement)	Chargeable to service tax as the arrangement amounts to renting of immovable property.



### **6.1.5 Whether hotels/restaurants/convention centres letting out their halls, rooms etc. for social, official or business or cultural functions fall within the scope of this declared list service?**

Halls, rooms etc. let out by hotels/restaurants for a consideration for organizing social, official or business or cultural functions are covered within the scope of renting of immovable property and would be taxable if other elements of taxability are present.

### **6.2 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.**

This service is already taxable as part of construction of residential complex service under clause (zzzh) of sub-section 105 of section 65 of the Act and as part of service in relation to commercial or industrial construction under clause (zzq) of sub-section 105 of section 65 of the Act. This entry covers the services provided by builders or developers or any other person, where building complexes, civil structure or part thereof are offered for sale but the payment for such building or complex or part thereof is received before the issuance of completion certificate by a competent authority.

#### **6.2.1 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 judgement passed by the Mumbai High Court in the case of Maharashtra Chamber of Housing Industry and Others vs. Union of India [012-TIOL-78HC-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.

**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 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.

**6.2.3 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.

**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 clause (54) of section 65B service portion, which would also be taxable if other ingredients of taxability are present.

**6.2.5 What would be the service tax liability on Build- Operate - Transfer (BOT) Projects?**

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 clause (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.

**6.2.6 If the builder instead of receiving consideration for the sale of an apartment receives a fixed deposit, which it converts after the completion of the building into sales consideration, will it amount to receiving any amount before the completion of service.**

This may be a colorable device wherein the consideration for provision of construction service is disguised as fixed deposit, which is unlikely to be returned. In any case the interest earned by the builder on such fixed deposits will be a significant amount received prior to the completion of the immovable property. As clarified at serial no. 5 of the table in point no 2.3.2 interest in such cases would be considered as part of the gross amount charged for the provision of service and the service of construction will be taxable.

**6.2.7 In certain States requirement of completion certificate are waived of for certain specified types of buildings. How would leviability of service tax be determined in such cases?**

In terms of Explanation to clause (b) of section 66E in such cases the completion certificate issued by an architect or a chartered engineer or a licensed surveyor of the respective local body or development or planning authority would be treated as completion certificate for the purposes of determining chargeability of service tax.

**6.2.8 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 immovable property given in the General Clauses Act, 1897 is part of immovable 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.

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

#### **6.3.1 What is the scope of the term 'intellectual property right'?**

'Intellectual property right' has not been defined in the Act. The phrase has to be understood as in normal trade parlance as per which intellectual property right includes the following:-

Copyright

Patents

Trademarks

Designs

Any other similar right to an intangible property

#### **6.3.2 Is the IPR required to be registered in India? Would the temporary transfer of a patent registered in a country outside India also be covered under this entry?**

Since there is no condition regarding the law under which an intellectual right should be registered, temporary transfer of a patent registered outside India would also be covered in this entry. However, it will become taxable only if the place of provision of service of temporary transfer of intellectual property right is in taxable territory.

6.4 Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software

The term 'information technology software' has been defined in section 65B of the Act as 'any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment'.

#### **6.4.1 Would sale of pre-packaged or canned software be included in this entry?**

No. It is a settled position of law that pre-packaged or canned software which is put on a media is in the nature of goods [Supreme Court judgment in case of Tata Consultancy Services vs State of Andhra Pradesh [2002(178) ELT 22(SC) refers]. Sale of pre-packaged or canned software is, therefore, in the nature of sale of goods and is not covered in this entry.

#### **6.4.2 Is on site development of software covered under this entry?**

Yes. On site development of software is covered under the category of development of information technology software.

#### **6.4.3 Would providing advice, consultancy and assistance on matters relating to information technology software be chargeable to service tax?**

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

#### **6.4.4 Would providing a license to use pre-packaged software be a taxable service?**

The following position of law needs to be appreciated to determine whether a license to use pre packaged software would be goods-

As held by the Hon'ble Supreme Court in the case of Tata Consultancy Services vs. State of Andhra Pradesh [2002(178) ELT 22(SC)] pre-packaged software or canned software or shrink wrapped software put on a media like is goods. Relevant portion of para 24 of the judgment is reproduced below-

“A software programme may consist of various commands which enable the computer to perform a designated task. The copyright in that programme may remain with the originator of the programme. But the moment copies are made and marketed, it becomes goods, which are susceptible to sales tax. Even intellectual property, once it is put on to a media, whether it be in the form of books or canvas (in case of painting) or computer discs or cassettes, and marketed would become “goods”. We see no difference between a sale of a software programme on a CD/floppy disc from a sale of music on a cassette/CD or a sale of a film on a video cassette/CD. In all such cases, the intellectual property has been incorporated on a media for purposes of transfer. Sale is not just of the media which by itself has very little value. The software and the media cannot be split up. What the buyer purchases and pays for is not the disc or the CD. As in the case of paintings or books or music or films the buyer is purchasing the intellectual property and not the media i.e. the paper or cassette or disc or CD. Thus a transaction sale of computer software is clearly a sale of “goods” within the meaning of the term as defined in the said Act. The term “all materials, articles and commodities” includes both tangible and intangible/incorporeal property which is capable of abstraction, consumption and use and which can be transmitted, transferred, delivered, stored, possessed etc. The software programmes have all these attributes.”

Therefore, in case a pre-packaged or canned software or shrink wrapped software is sold then the transaction would be in the nature of sale of goods and no service tax would be leviable.

The judgement of the Supreme Court in Tata Consultancy Service case is applicable in case the pre-packaged software is put on a media before sale. In such a case the transaction will go out of the ambit of definition of service as it would be an activity involving only a transfer of title in goods.

As per the definition of ‘service’ as contained in clause (44) of section 65(B) only those transactions are outside the ambit of service which constitute only a transfer

of title in goods or such transfers which are deemed to be a sale within the meaning of Clause 29(A) of article 366 of the Constitution. The relevant category of deemed sale is transfer of right to use goods contained in sub-clause (d) of clause (29A) of the Constitution.

'Transfer of right to use goods' is deemed to be a sale under Article 366(29A) of the Constitution of India and transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods is a declared service under clause (f) of section 66E.

Transfer of right to use goods is a well-recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. For understanding the concept of transfer of right to use please refer to point no 6.6.1.

A license to use software which does not involve the transfer of 'right to use' would neither be a transfer of title in goods nor a deemed sale of goods. Such an activity would fall in the ambit of definition of 'service' and also in the declared service category specified in clause (f) of section 66E.

Therefore, if a pre-packaged or canned software is not sold but is transferred under a license to use such software, the terms and conditions of the license to use such software would have to be seen to come to the conclusion as to whether the license to use packaged software involves transfer of 'right to use' such software in the sense the phrase has been used in sub-clause (d) of article 366(29A) of the Constitution. (See point no 5.6.1).

In case a license to use pre-packaged software imposes restrictions on the usage of such licenses, which interfere with the free enjoyment of the software, then such license would not result in transfer of right to use the software within the meaning of Clause 29(A) of Article 366 of the Constitution. Every condition imposed in this regard will not make it liable to service tax. The condition should be such as restrains the right to free enjoyment on the same lines as a person who has otherwise purchased goods is able to have. Any restriction of this kind on transfer of software so licensed would tantamount to such a restraint.

Whether the license to use software is in the paper form or in electronic form makes no material difference to the transaction.

However, the manner in which software is transferred makes material difference to the nature of transaction. If the software is put on the media like computer disks or even embedded on a computer before the sale the same would be treated as goods. If software or any programme contained is delivered online or is downloaded on the internet the same would not be treated as goods as software as the judgment of the Supreme Court in Tata Consultancy Service case is applicable only in case the pre-packaged software is put on a media before sale.

Delivery of content online would also not amount to a transaction in goods as the content has not been put on a media before sale. Delivery of content online for consideration would, therefore, amount to provision of service.

#### **6.4.5 In case contract is given for customized development of software and the customized software so developed is delivered to the client on media like a CD then would the transaction fall in this declared entry or would it be covered by the TCS Judgement?**

In such a case although the software is finally delivered in the form of goods, since the contract is essentially for design and development of software it would fall in the declared list entry. Such a transaction would be in the nature of composite transaction involving an element of provision of service,

in as much as the contract is for design and development of software and also an element of transfer of title in goods, in as much as the property in CD containing the developed software is transferred to the client. However, the CD remains only a media to transmit or deliver the outcome of which is essentially and pre-dominantly a contract of service. Therefore, such a transaction would not be excluded from the ambit of the definition of 'service' as the transaction does not involve 'only' transfer of title in goods and dominant nature of the transaction is that of provision of service.

6.5 Activities in relation to delivery of goods on hire purchase or any system of payment by instalments

### **6.5.1 Is the delivery of goods on hire purchase of any system of payment by instalments taxable?**

No. The delivery of goods on hire purchase or any system of payment on installment is not chargeable to service tax because as per Article 366(29A) of the Constitution of India such delivery of goods is deemed to be a sale of goods. (For guidance on this aspect please refer to point no. 2.7 of this Guide) However activities or services provided in relation to such delivery of goods are covered in this declared list entry.

### **6.5.2 What is the scope of the phrase 'delivery of goods on hire-purchase or any system of payment by instalments'?**

Section 2 of the Hire Purchase Act, 1972 defines a "hire purchase agreement" as 'an agreement under which goods are let out on hire and under which the hirer has the option to purchase them in accordance with the terms of the agreement and includes an agreement under which-

possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical installments, and

the property in the goods is to pass to such person on the payment of the last of such installments, and

such person has a right to terminate the agreement at any time before the property so passes.'

As per the Sales of Goods Act by Mulla (Seventh Edition. Page 14) delivery is 'voluntary dispossession in favour of another' and that 'in all cases the essence of delivery is that the deliverer, by some apt and manifest act, puts the deliverer in the same position of control over thing, either directly or through a custodian, which he held himself immediately before the act'.

The nature of such arrangements has been explained by the Supreme Court in the case of Association of Leasing & Financial Service Companies Vs Union Of India [2010 (20) S.T.R. 417 (S.C.)]. The relevant extract in para 20 of the said judgment is reproduced below:

**"20.** According to Sale of Goods Act by Mulla [6th Edition] a common method of selling goods is by means of an agreement commonly known as a hire-purchase agreement which is more aptly described as a hiring agreement coupled with an option to purchase, i.e., to say that the owner lets out the chattel on hire and undertakes to sell it to the hirer on his making certain number of payments."

Key ingredients of the deemed sale category of 'delivery of goods on hire-purchase or any system of payment by instalments', therefore are • Transfer of possession (and not just of custody)

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



### **6.5.3 What is the difference between a normal hiring agreement and a hire-purchase agreement?**

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

### **6.5.4 Are 'finance leases', 'operating leases' and 'capital leases' covered as 'delivery of goods on hire purchase or any system of payment of installments'?**

Such leases would be covered only if the terms and conditions of such leases have the ingredients as explained above. Normally in an 'operating lease' the lease is for a term shorter than property's useful life and the lessor is typically responsible for taxes and other expenses on the property. The lessee does not have an option to purchase the property at the end of the period of lease. Such arrangements do not qualify as 'delivery of goods on hire purchase or any system of payment of installments'.

On the other hand 'financial leases' or 'capital leases' strongly resemble security arrangements and are entered into for financing the asset. The lessee pays maintenance costs and taxes and has the option of purchasing the lease end. Such arrangements resemble a hire-purchase agreement and would fall under the said 'deemed sale' category. The essence of this deemed sale category is that the arrangement under which the goods are 'delivered' should be in the nature of a financing arrangement wherein the lessee pays maintenance costs and taxes and has the option of purchasing the asset so delivered at lease end.

It may, however, be pointed out that in case an 'operating lease' has elements of transfer of 'right to use' then the same would be covered in the other 'deemed sale' category pertaining to 'transfer of right to use any goods'

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

It has been held by Supreme court in the case of Association Of Leasing & Financial Service Companies Vs Union Of India[2010 (20) S.T.R. 417 (S.C.)] that in equipment leasing/hirepurchase agreements there are two different and distinct transactions, viz., the financing transaction and the equipment leasing/hire-purchase transaction and that the financing transaction, consideration for which was represented by way of interest or other charges like lease management fee, processing fee, documentation charges and administrative fees, which is chargeable to service tax. Therefore, such financial services that accompany a hirepurchase agreement fall in the ambit of this entry of declared services.

### **6.5.6 Is service tax leviable on the entire quantum of interest and other charges received in relation to a hire purchase?**

No. In terms of the exemption notification relating to such activities, service tax is leviable only on 10% of the amount representing interest plus other charges explicitly charged as mentioned above.

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

### **6.6.1 What is the meaning and scope of the phrase 'transfer of right to use such goods'**

Transfer of right to use goods is a well recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. **‘Transfer of right of goods’ involves transfer of possession and effective control over such goods** in terms of the judgment of the Supreme Court in the case of State of Andhra Pradesh vs Rashtriyalspat Nigam Ltd [Judgment dated 6/2/2002 in Civil Appeal no. 31 of 1991]. Transfer of custody along with permission to use or enjoy such goods, per se, does not lead to transfer of possession and effective control.

The test laid down by the Supreme Court in the case of Bharat Sanchar Nigam Limited vs Union of India [2006(2)STR161(SC)] to determine whether a transaction involves transfer of right to use goods, which has been followed by the Supreme Court and various High Courts, is as follows:

There must be goods available for delivery;

There must be a consensus ad idem as to the identity of the goods;

The transferee should have legal right to use the goods – consequently all legal consequences of such use including any permissions or licenses required therefore should be available to the transferee;

For the period during which the transferee has such legal right , it has to be the exclusion to the transferor – this is the necessary concomitant of the plain language

of the statute, viz., a ‘transfer of the right to use’ and not merely a license to use the goods;

Having transferred, the owner cannot again transfer the same right to others.

Whether a transaction amounts to transfer of right or not cannot be determined with reference to a particular word or clause in the agreement. The agreement has to be read as a whole, to determine the nature of the transaction.

### 6.6.2 Whether the transactions listed in column 1 of the table below involve transfer of right to use goods?

S.No.	Nature of transaction	Whether transaction involves transfer of right to use
1	A car is given in hire by a person to a company along with a driver on payment of charges on per month/mileage basis	Right to use is not transferred as the car owner retains the permissions and licenses relating to the cab. Therefore possession and effective control remains with the owner (Delhi High Court Judgment in the case of International Travel House in Sales Tax Appeal no 10/2009 refers). The service is, therefore covered in the declared list entry.
2	Supply of equipment like excavators, wheel loaders, dump trucks, cranes, etc for use in a particular project where the person to whom such equipment is supplied is subject to such terms and conditions in the contract relating to the manner of	The transaction will not involve transfer of right to use such equipment as in terms of the agreement the possession and effective control over such equipment has not been transferred even though the custody may have been transferred along with permission to use such equipment. The receiver is not free to use such equipment in any manner as he likes and conditions have

	use of such equipment, return of such equipment after a specified time, maintenance and upkeep of such equipment.	been imposed on use and control of such equipment.
3.	Hiring of bank lockers	The transaction does not involve the right to use goods as possession of the lockers is not transferred to the hirer even though the contents of the locker would be in the possession of the hirer.(refer to Andhra Pradesh High Court Judgment in the case of State Bank of India Vs State of Andhra Pradesh)
4.	Hiring out of vehicles where it is the responsibility of the owner to abide by all the laws relating to motor vehicles	No transfer of right to use goods as effective control and possession is not transferred ( Allahabad High Court judgement in Ahuja Goods Agency vs State of UP [(1997)106STC540] refers)
5	Hiring of audio visual equipment where risk is of the owner	No transfer of right to use goods as effective control and possession is not transferred

Note: The list in the table above is only illustrative to demonstrate how courts have interpreted terms and conditions of various types of contracts to see if a transaction involve transfer of right to use goods. The nature of each transaction has to be examined in totality keeping in view all the terms and conditions of an agreement relating to such transaction.

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

In terms of this entry the following activities if carried out by a person for another for consideration would be treated as provision of service.

Agreeing to the obligation to refrain from an act.

Agreeing to the obligation to tolerate an act or a situation.

Agreeing to the obligation to do an act.

##### **6.7.1 Would non-compete agreements be considered a provision of service?**

Yes. By virtue of a non-compete agreement one party agrees, for consideration, not to compete with the other in any specified products, services, geographical location or in any other manner. Such action on the part of one person is also an activity for consideration and will be covered by the declared services.

#### 6.8 Service portion in execution of a works contract

Works contract has been defined in section 65B of the Act as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immoveable property or for carrying out any other similar activity or a part thereof in relation to such property.

Typically every works contract involves an element of sale of goods and provision of service. In terms of Article 366 (29A) of the Constitution of India transfer of property in goods involved in execution of works

contract is deemed to be a sale of such goods. It is a well settled position of law, declared by the Supreme Court in BSNL's case [2006(2) STR 161 (SC)], that a works contract can be segregated into a contract of sale of goods and contract of provision of service. This declared list entry has been incorporated to capture this position of law in simple terms.

It may be pointed out that prior to insertion of clause (29A) in article 366 of the Constitution defining certain categories of transactions as 'deemed sale' of goods the position of law, as declared by the Supreme Court in Gannon Dunkerley's case (AIR1958SC560) was that a works contract was essentially a contract of service and no sales tax could be levied on goods transferred in the course of execution of works contract. It is only after the constitutional amendment that VAT or sales tax is leviable on such goods. The remaining portion of the contract remains a contract for provision of service.

Further, with a view to bring certainty and simplicity, the manner of determining the value of service portion in works contracts has been given in rule 2A of the Valuation Rules. For details on valuation please refer to point no. 8.2 of this Guide.

#### **6.8.1 Would labour contracts in relation to a building or structure be treated as a works contract?**

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

#### **6.8.2 Would contracts for repair or maintenance of motor vehicles be treated as 'works contracts'? If so, how would the value be determined for ascertaining the value portion of service involved in execution of such a works contract?**

Yes. Contracts for repair or maintenance of moveable properties are also works contracts if property in goods is transferred in the course of execution of such a contract. Service tax has to be paid in the service portion of such a contract.

#### **6.8.3 Would contracts for construction of a pipe line or conduit be covered under works contract?**

Yes. As pipeline or conduits are structures on land contracts for construction of such structure would be covered under works contract.

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

Such contracts would be treated as works contracts if transfer of property in goods is involved in such a contract.

#### **6.8.5. Would contracts for painting of a building, repair of a building, renovation of a building, wall tiling, flooring be covered under 'works contract'?**

Yes, if such contracts involve provision of materials as well.

### **6.8.6 Is the definition of ‘works contract’ in clause (54) of section 65B in line with the definition of ‘works contract’ in various State VAT laws?**

The definition of ‘works contract’ in clause (54) of section 65B covers such contracts which involve transfer of property in goods and are for carrying out the activities specified in the said clause (54) in respect of both moveable and immovable properties. This is broadly in consonance with the definition of ‘works contract’ in most of the State VAT laws. However, each State has defined ‘works contracts’ differently while dealing with works contract as a category of deemed sales. There could, therefore, be variations from State to State. For service tax purposes the definition in clause (54) of section 65B would alone be applicable.

### **6.8.7 What is the way to segregate service portion in execution of a works contract from the total contract or what is the manner of determination of value of service portion involved in execution of a works contract?**

For detailed discussion on this topic please refer to Guidance Note 8, in particular point no 8.2.

6.9 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

#### **6.9.1 What are the activities covered in this declared list entry?**

The following activities are illustration of activities covered in this entry-

Supply of food or drinks in a restaurant;

Supply of foods and drinks by an outdoor caterer.

In terms of article 366(29A) of the Constitution of India supply of any goods, being food or any other article of human consumption or any drink (whether or not intoxicating) in any manner as part of a service for cash, deferred payment or other valuable consideration is deemed to be a sale of such goods. Such a service therefore cannot be treated as service to the extent of the value of goods so supplied. The remaining portion however constitutes a service. It is a well settled position of law, declared by the Supreme Court in BSNL’s case [2006(2)STR161(SC)], that such a contract involving service along with supply of such goods can be dissected into a contract of sale of goods and contract of provision of service. This declared list entry is has been incorporated to capture this position of law in simple terms.

#### **6.9.2 Are services provided by any kind of restaurant, big or small, covered in this entry?**

Yes. Although services provided by any kind of restaurant are covered in this entry, the emphasis is to levy tax on services provided by only such restaurants where the service portion in the total supply is substantial and discernible. Thus the following category of restaurants are exempted –

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 airheating in any part of the establishment, at any time during the year, and which has a license to serve alcoholic beverage.

Below the threshold exemption

#### **6.9.3. How is the value of service portion to be determined?**

For detailed discussion on this topic please refer to Guidance Paper 8 and in particular point no 8.4.

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Guidance Note 7 – Exemptions

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Under the present system there are 88 exemption notifications. The need for exemptions is not obviated with the introduction of negative list. While some existing exemptions have been built into the negative list, others, wherever necessary, have been retained as exemptions. In addition some new exemptions are also proposed to be introduced. For ease of reference and simplicity most of the exemptions are now a part of one single mega exemption notification 25/2012-ST dated 20/6/12 (list of such exemptions is placed as **Exhibit A3**). The exemptions requiring some clarification are explained below:

## **7.1 Are services provided to all international organizations exempt from service tax?**

No. Services to only specified international organisations are exempt. ‘Specified international organisation’ has been defined in the notification and means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 to which the provisions of the Schedule to the said Act apply. Illustrative list of specified international organisations are as follows:

International Civil Aviation Organisation

World Health Organisation

International Labor Organisation

Food and Agriculture Organisation of the United Nations

UN Educational, Scientific and Cultural Organisation (UNESCO)

International Monetary Fund (IMF)

International Bank for Reconstruction and Development

Universal Postal Union

International Telecommunication Union

World Meteorological Organisation

Permanent Central Opium Board

International Hydrographic Bureau

Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants

Asian African Legal Consultative Committee

Commonwealth Asia Pacific Youth Development Centre, Chandigarh

Delegation of Commission of European Community

Customs Co-operation Council

Asia Pacific Telecommunity

International Centre of Public Enterprises in Developing Countries, Ljubljana(Yugoslavia)

International Centre for Genetic Engineering and Biotechnology

Asian Development Bank

South Asian Association for Regional Co-operation

International Jute Organisation, Dhaka, Bangladesh

Note: As the list is subjected to addition (or even deletion), the officers are advised to verify the eligibility of the concerned organizations as and when required. **7.2 Health Care Services (Details at Sr. No 2 of Exhibit A3)**

### **7.2.1 Are all health care services exempt?**

No. only services in recognized systems of medicines in India are exempt. In terms of the Clause (h) of section 2 of the Clinical Establishments Act, 2010, the following systems of medicines are recognized systems of medicines:

Allopathy

Yoga

Naturopathy

Ayurveda

Homeopathy

Siddha

Unani

Any other system of medicine that may be recognized by central government

### **7.2.2 Who all are covered as paramedic?**

Paramedics are trained health care professionals, for example nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.

### 7.3 Services provided to or by a governmental authority

#### **7.3.1 Are various corporations formed under Central Acts or State Acts or various government companies registered under the Companies Act, 1956 or autonomous institutions set up by special acts covered under the definition of 'governmental authority'?**

No. In terms of its definition in mega notification 25/2012-ST, following conditions should be satisfied for a board, body or an authority to be eligible for exemptions as a governmental authority:

set up by an act of the Parliament or a State Legislature;

established with 90% or more participation by way of equity or control by Government; and

carries out any of the functions entrusted to a municipality under article 243W of the Constitution.

#### **7.3.2 What are the functions entrusted to a municipality under article 243W of the Constitution?**

Article 243W of the Constitution is as under:

'Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

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

the preparation of plans for economic development and social justice;

the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.'

Matters listed in twelfth schedule are:

Urban planning including town planning.

Regulation of land-use and construction of buildings.

Planning for economic and social development.

Roads and bridges.

Water supply for domestic, industrial and commercial purposes.

Public health, sanitation conservancy and solid waste management.

Fire services.



Urban forestry, protection of the environment and promotion of ecological aspects.

Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

Slum improvement and upgradation.

Urban poverty alleviation.

Provision of urban amenities and facilities such as parks, gardens, playgrounds.

Promotion of cultural, educational and aesthetic aspects.

Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.

Cattle pounds; prevention of cruelty to animals.

Vital statistics including registration of births and deaths.

Public amenities including street lighting, parking lots, bus stops and public conveniences.

Regulation of slaughter houses and tanneries.

**Are all services provided by a governmental authority exempt from service tax?**

No. All services are not exempt. 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 are exempt. All other services are subjected to service tax if they are not otherwise exempt.

**Are all services provided to a governmental authority exempt from service tax?**

No. A governmental authority enjoys same benefits as the Government or a local authority in respect of receipt of services. The following services when provided to a governmental authority are exempt:

Specified services as listed in Sr. no. 12 of Exhibit A3 relating to construction.

Services 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.

Services received from a service provider located in a non- taxable territory by such authorities in relation to any purpose other than commerce, industry or any other business or profession.

**7.4 Charities (Details at Sr. No. 4 of Exhibit A3)**

**7.4.1 I am a registered charity. How do I know that activities provided by me are charitable activities?**

You are doing charitable activities if you are registered with income tax authorities for this purpose under section 12AA the Income Tax Act, 1961 and carry out one or more of the specified charitable activities. Following are the specified charitable activities:-

public health by way of –

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

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

advancement of religion or spirituality;

advancement of educational programmes or skill development relating to,-

abandoned, orphaned or homeless children;

physically or mentally abused and traumatized persons;

prisoners; or

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

preservation of environment including watershed, forests and wildlife; or

advancement of any other object of general public utility up to a value of twenty five lakh rupees in a financial year subject to the condition that total value of such activities had not exceeded twenty five lakh rupees during the preceding financial year.

#### **7.4.2 What is the tax liability of a registered charity on their activities?**

If a registered charity is doing any activity falling in negative list of services or is otherwise exempt, it is not required to pay service tax on that activity. In case, where its activity is covered explicitly in any of the specified charitable activities at 'a' to 'd' of the answer to 7.4.1, it is exempt from service tax without any value limit. For charitable activities mentioned at 'e', it is exempt up to a value of twenty five lakh rupees in a financial year if the total value of such services had not exceeded twenty five lakh rupees during the preceding financial year. However, this later exemption is available only if the activities are meant for general public. General public is defined in the notification as 'body of people at large sufficiently defined by some common quality of public or impersonal nature'.

7.5 Religious places/ceremonies (Details at Sr. No. 5 of Exhibit A3)

#### **7.5.1 Is renting of precincts of a religious place taxable?**

Yes. However, exemption is available only if the place is meant for general public. General public is also defined in the mega notification 25/2012-ST as 'body of people at large sufficiently defined by some common quality of public or impersonal nature'.

#### **7.5.2 Am I liable to pay service tax for conducting religious ceremonies for my client?**

No. Conduct of religious ceremonies is exempt under Sr. no. 4 of mega exemption. Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage, and death involve elaborate religious ceremonies.

7.6 Advocates or arbitral tribunals (Details at Sr. No.6 of Exhibit A3)

### **7.6.1 What is the tax liability of advocates, or arbitral tribunal in respect of services provided by them?**

Advocates can provide services either as individuals or as firms. Legal services provided by advocates or partnership firms of advocates are exempt from service tax when provided to the following:

an advocate or partnership firm of advocates providing legal services (same class of persons)

any person other than a business entity

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

However, in respect of services provided to business entities, with a turnover exceeding rupees ten lakh in the preceding financial year, tax is required to be paid on reverse charge by the business entities. Business entity is defined in section 65B of the Finance Act, 1994 as 'any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession'. Thus it includes sole proprietors as well. The business entity can, however, take input tax credit of such tax paid in terms of Cenvat Credit Rules, 2004, if otherwise eligible. The provisions relating to arbitral tribunal are also on similar lines.

### **7.6.2 I am serving as a member of an arbitral tribunal comprising many arbitrators and receiving an amount from the arbitral tribunal. Am I providing a service and required to pay service tax on such amount received?**

Arbitral tribunal comprising more than one arbitrator will constitute an entity by itself. Thus services of individual arbitrator when represented on such an arbitral tribunal will also constitute service by one person to another. However such service is exempt under sr. no. 6(c) of the mega notification.

7.7 Recreational coaching or training (Details at Sr. No. 8 of Exhibit A3)

#### **7.7.1 What is the scope of exemption to coaching or training in recreational activities?**

There is exemption from service tax to training or coaching in recreational activities relating to arts, culture or sports. The benefit is available to coaching or training relating to all forms of dance, music, painting, sculpture making, theatre and sports etc.

7.8 Sports (Details at Sr. No 10 of Exhibit A3)

#### **7.8.1 What is the tax liability on services provided to a recognized sports body?**

Services provided to a recognized sports body by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from service tax. Similarly services by a recognized sports body to another are also exempt. Services by individuals such as selectors, commentators, curators, technical experts are taxable. Recognized sports body has been defined in the mega notification itself.

#### **7.8.2 Are the services of an individual as a player, umpire in a premier league taxable?**

The service of a player to a franchisee which is not a recognized sports body is taxable. However, services of an individual as umpire, referee when provided directly to a recognized sports body shall be exempt.

7.9 Construction (Details at Sr No 12 to 14 of Exhibit A3)

**7.9.1 Which are the construction services exempted when provided to the Government, a local authority or a governmental authority?**

Exemption is available to the services by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession

a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958

a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment

canal, dam or other irrigation works

pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal

a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the of a religious building

**7.9.2 What is the significance of words predominantly for use other than for commerce, industry, or any other business or profession?**

The exemption is available for a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession. The significance of the word predominantly is that benefit of exemption will not be denied if the building is also incidentally used for some other purposes if it is used primarily for commerce, industry, or any other business or profession.

**7.9.3 I am a contractor in number of projects for constructing 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.

**7.9.4 I am engaged in construction of hospitals and educational institutes. Am I required to pay service tax?**

If you are constructing such structures for the government, a local authority or a governmental authority, you are not required to pay service tax. If you are constructing for others, you are required to pay tax.

**7.9.5 What is the service tax liability on construction of a religious building?**

Service tax is exempt on construction of a building owned by an entity registered under section 12 AA of the Income tax Act, 1961 and meant predominantly for religious use by general public.

**7.9.6 I am constructing a residential complex for my client. The houses are predominantly meant for self-use or the use of the employees. Am I required to pay service tax?**

If your client is other than the Government, a local authority or a governmental authority, you are required to pay service tax. However, exemption is available for services provided to the Government, a local authority or a governmental authority by way of construction of a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act.

**7.9.7 What is the service tax liability on construction of two - floor house constructed through a contractor? My contractor is demanding service tax. Is he right in doing so?**

Service tax is payable on construction of a residential complex having more than one single residential unit. Single residential unit is defined in the notification and means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family. If each of the floors of your house is a single residential unit in terms of the definition, the contractor is rightly demanding service tax. If the title of each of floors is capable of being transferred to another person by mutation in land/ municipal records, both the floors may be considered as separate single residential units.

**7.9.8 Are repair, maintenance of airports, ports and railways liable to tax?**

Yes. They are liable to service tax and the same will be available as input tax credit to railways, port or airport authority, if other conditions are met.

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

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

7.10 Copyright (Details at Sr No 15 of Exhibit A3)

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

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

**7.10.2 I am a composer of a song having the copyright for my song. When I allow the recording of the song on payment of some royalty by a music company for further distribution, am I required to pay service tax on the royalty amount received from a music company?**

No, as the copyright relating to original work of composing song falls under clause (a) of subsection (1) of section 13 of the Indian Copyright Act, 1957 which is exempt from service tax. Similarly an author having copy right of a book written by him would not be required to pay service tax on royalty amount received

from the publisher for publishing the book. A person having the copyright of a cinematographic film would also not be required to pay service tax on the amount received from the film exhibitors for exhibiting the cinematographic film in cinema theatres.

### **7.10.3 What would be the liability of service tax on various arrangements entered into for screening of cinematographic films by producers/distributors/exhibitors?**

A detailed circular has been issued by the Board dealing with various arrangements in the context of existing present system of taxation based on positive list of services vide Circular No.148 / 17 / 2011 – ST, dated 13.12.2011. The said circular may be referred for the guidance. However, no service tax is payable on temporary transfer of copyright in relation to cinematographic films as the same is exempt under the mega-notification 25/2012.

## **7.11 Miscellaneous**

### **7.11.1 I am an artist. How do I know that my activity is subjected to service tax?**

The activities by a performing artist in folk or classical art forms of music, dance, or theatre are not subjected to service tax. All other activities by an artist in other art forms e.g. western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly activities of artists in still art forms e.g. painting, sculpture making etc. are taxable.

### **7.11.2 Are the services of an artist as brand ambassador taxable? Who are brand ambassadors?**

Yes, services provided by an artist as brand ambassador is taxable. Brand ambassador is defined in the mega notification and 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.

### **7.11.3 What is the significance of declared tariff?**

Declared tariff is defined in the mega notification. It 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. Its relevance is in determining the liability to pay service tax on renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes as exemption is available where declared tariff of a unit of accommodation is below rupees one thousand per day or equivalent. However, the tax will be liable to be paid on the amount actually charged i.e. declared tariff minus any discount offered.

Thus if the declared tariff is Rs 1100/-, but actual room rent charged is Rs 800/-, tax will be required to be paid on Rs 800/-.

When the declared tariff is revised as per the tourist season, the liability to pay tax shall be only on the declared tariff for the accommodation where the published/printed tariff is above Rupees 1000/-. However, the revision in tariff should be made uniformly applicable to all customers and declared when such change takes place.

**7.11.4 I am running a hotel having the facility of central air-conditioning. There are number of restaurants in the hotel. Am I liable to pay service tax on to serving of food or beverages in these restaurants?**

Serving of food or beverages in a centrally air-conditioned premise will be taxed if its restaurant has a license to serve alcoholic beverages. However, those restaurants which do not have license to serve alcoholic beverages will be exempt from service tax. Serving of food or beverages outside the restaurant, say near the swimming pool, will be taxed if service is from a restaurant having license to serve alcoholic beverages.

**7.11.5 Is giving of a bus on hire to any person liable to tax?**

Giving on hire a bus to a state transport undertaking is exempt from service tax. If the bus is given on hire to a person other than a state transport undertaking, it will be taxed.

**6.11.6 I have a bus with a contract permit and operating the bus on a route. The passengers embark or disembark from the bus at any place falling on the route and pay separate fares either for the whole or for the stages of journey. Am I required to pay tax?**

No. However, transport of passengers in a contract carriage for the transportation of passengers, for tourism, conducted tour, charter or hire is taxable.

**7.11.7 I have taken on rent a piece of vacant land from its owner. The land will be used for providing the facility of vehicles parking on payment. What is my service tax liability?**

You are not required to pay tax on providing the facility of vehicle parking to general public. However, if you are providing the facility of parking of vehicles to a car dealer, you are be required to pay tax as parking facility is not for general public. Moreover, land owner is liable to pay service tax on renting of his land to you.

**7.11.8 What is the tax liability of a RWA on the charges collected from own members by way of reimbursement of charges or share of contribution for the common use of its members in a housing society or a residential complex.**

Service of an unincorporated body or a non- profit entity registered under any law for the time being in force to its own members up to an amount of Rs 5,000 per member per month by way of reimbursement of charges or share of contribution is exempt from service tax. Where RWA is working as a pure agent of its members for sourcing of goods or services from a third person, amount collected by RWA from its members may be excluded from the value of taxable service in terms of Rule 5(2) Of Service Tax (Determination of Value) Rules, 2006 subject to compliance with the specified conditions.

**7.11.9 I am a Resident Welfare Association (RWA). The members contribute an amount to RWA for holding camps to provide health care services to poor men and women. Am I required to pay tax on contribution received from members?**

No. You are not required to pay service tax on the contribution received as you are carrying out any activity (holding camps to provide health care services) which is exempt from the levy of service tax. If contribution is for carrying out an activity which is taxable, you are required to pay service tax.

**7.11.10 What is the tax liability on services by the intermediaries to entities those are liable to pay tax on their final output services? (Details at Sr. No 29 of Exhibit A3)**

Services by following intermediaries are exempt from service tax:

sub-broker or an authorised person to a stock broker;

authorised person to a member of a commodity exchange;

mutual fund agent to a mutual fund or asset management company;

distributor to a mutual fund or asset management company;

selling or marketing agent of lottery tickets to a distributor or a selling agent;

selling agent or a distributor of SIM cards or recharge coupon vouchers;

business facilitator or a business correspondent to a banking company or an insurance company in a rural area; or

sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

**7.11.11 Whether the exemption provided in the mega -exemption to services by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide input service to these main contractors in relation to such construction?**

As per clause (1) of section 66 Reference to a service by nature or description in the Act will not include reference to a service used for providing such service. Therefore, if any person is providing services, in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., such as architect service, consulting engineer service, which are used by the contractor in relation to such construction, the benefit of the specified entries in the mega-exemption would not be available to such persons unless the activities carried out by the sub-contractor independently and by itself falls in the ambit of the exemption.

It has to be appreciated that the wordings used in the exemption are 'services by way of construction of roads etc' and not 'services in relation to construction of roads etc'. It is thus apparent that just because the main contractor is providing the service by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the contractor as an exempt service.

However, a sub-contractor providing services by way of works contract to the main contractor, providing exempt works contract services, has been exempted from service tax under the mega exemption if the main contractor is engaged in providing exempt services of works contracts. It may be noted that the exemption is available to sub-contractors engaged in works contracts and not to other outsourced services such as architect or consultants.

**7.11.12 What is the tax liability of a person carrying out intermediate production process as job work for his clients?**



Any process amounting to manufacture or production of goods is in the negative list. If process does not amount to manufacture or production of goods, and is further not covered in clause 30 of the mega notification, the same is liable to service tax.

**7.11.13 Whether service tax is leviable on telephone services rendered by M/s. BSNL through Village Panchayat Telephone (VPT) with local call facility, as M/s. BSNL is a public sector unit and telephones run by it cannot be treated as ‘departmentally run telephones’?**

As per Sl. No. 32 of the mega-exemption Notification in addition to exemption to ‘departmentally run telephones’ there is exemption for ‘Guaranteed Public Telephone operating only for local calls’ also. Village Public Telephones (VPTs) with facility of local calls (without 9 dialing facility or STD facility) run by BSNL would fall under the category of ‘Guaranteed Public Telephone operating only for local calls’.

**7.11.14 I am in the business of running a chain of restaurants. I intend to sell my business. Am I required to pay service tax?**

Services by way of transfer of a going concern, as a whole or an independent part thereof, are exempt from service tax. Therefore, you are not required to pay service tax on such sale of your business. Sale of assets of a business that has closed will be outside the definition of “service”

**7.11.15 What does the term ‘transfer of a going concern’ mean?**

Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted.

**7.11.16 Footwear Association of India is organizing a business exhibition in Germany for footwear manufacturers of India. Is Footwear association of India required to pay service tax on services to footwear manufacturers?**

No. The activity is exempt from service tax.

**7.11.17 I am resident in Jammu and Kashmir and planning to construct a property in Delhi. I have got the architectural drawings made from an architect who is also resident in Jammu and Kashmir. Am I liable to pay service tax on architect services?**

No. Even though the property is located in Delhi- in a taxable territory- your architect is exempt from service tax as both the service provider and the service receiver is in a non-taxable territory.

**7.11.18 I am an individual receiving services from a service provider located in nontaxable territory. Am I required to pay service tax?**

If you are using these services in relation to any purpose other than commerce, industry or any other business or profession, you are required to pay tax under reverse charge, unless you are otherwise exempt. If use is for any other purpose, you are exempt from service tax.

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With the introduction of system of taxation of services based on the negative list there has been no fundamental change in the manner of valuation of service for the purpose of payment of service tax. The broad scheme remains the same barring some marginal changes carried out to align the scheme of valuation of taxable services and the Service Tax (Determination of Value) Rules, 2006 with the new system of taxation. Broadly these changes in the Valuation Rules are as follows:-

As compared to the existing two schemes for valuation of works contract services – one under the rule 2A of the Valuation Rules and second under the Works Contract (Composition Scheme for Payment of Service Tax) Rules 2007 has been replaced with a unified scheme under the new rule 2A of Service Tax (Determination of Value) Rules, 2006.

A new Rule 2C has been inserted for determining the value of service involved in supply of food or any other article of human consumption or any drinks in a restaurant or as outdoor catering. The existing scheme of determination of value of such services through prescribed abatements in various exemption notifications has been done away with.

There are certain changes in rule 6 of the Service Tax (Determination of Value) Rules, 2006.

All notifications that prescribed the abatements for working out the taxable value from the gross amount charged have been merged into one single exemption notification i.e., notification no. 26/2012-ST dated 20/6/12.

The broad scheme of valuation and provisions of Valuation Rules have been explained through a set of examples, questions and answers below.

## **8.1. Broad Scheme of Valuation.**

### **8.1.1 How is value of service relevant for the purpose of payment of service tax?**

In terms of the charging provisions contained in Section 66B, service tax is levied @ 12% on the value of taxable services. Therefore, value of service provided is relevant for determining the amount of service tax payable when a taxable service is provided by a person to another. **8.1.2 What is the value on which service tax is to be paid?**

The manner of value of service is provided in Section 67. As per sub-section (1) of Section 67 wherever Service Tax is chargeable on any taxable service with regard to its value then its value shall-

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

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

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

### **8.1.3 If the gross amount charged is inclusive of service tax payable then would service tax be chargeable on the gross amount?**

No. As per sub-section (2) of section 67 where the gross amount chargeable by the service provider is inclusive of service tax payable then the value of such taxable service shall be such amount as, with the addition of such tax payable, is equal to the gross amount charged. For example if the gross amount charged for provision of service is Rs.1500 then the value of taxable service would be Rs.1339.29 (1500 x 100/112) as after including the tax payable at Rs.1339.29 @ 12% (which works out to Rs.160.71) the total amount (1339.29 + 160.71) comes to Rs.1500.

### **8.1.4 Is it necessary that gross amount charged should have been received by the service provider prior to provision of service?**

No. As per sub-section (3) of Section 67 the gross amount charged includes any amount received towards the taxable service before during or after the provision of such service.

### **8.1.5 What is the meaning of 'consideration' referred to in sub clause (1) Section 67?**

The concept of consideration comes from the very root of the definition of service contained in clause (44) of section 65B as per which service has been defined as an activity carried out by a person for another 'for consideration'.

For detailed discussion on consideration please refer to Point 2.2 of this Guide. The consideration could be monetary or non-monetary.

### **8.1.6 If provision of service is for the consideration for money then what will be the manner of determining the value of taxable service?**

In terms of clause (i) of sub-section (1) of Section 67 in case provision of service is for consideration in money, then the value of taxable service shall be the gross amount charged by the service provider for such service provided or agreed to be provided by him.

### **8.1.7 What is the meaning of 'gross amount charged'?**

'Gross amount charged' has been defined in Explanation (c) of Section 67 to include payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, 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.

### **8.1.8 What is the manner of determining the value of non-monetary consideration?**

As per clause (ii) of sub-section (1) of section 67 of the Act where the consideration received is not wholly or partly consisting of money the value of taxable service shall be the equivalent money value of such consideration. If the same is not ascertainable then the value of such consideration is determined under clause (iii) of section 67 read with rule 3 of the Service Tax (Determination of the value) Rules 2006 as follows:-

On the basis of gross amount charged for similar service provided to other person in the ordinary course of trade;

Where value cannot be so determined, the equivalent money value of such consideration, not less than the cost of provision of service.

**8.1.9. As per clause (iii) of sub-section (1) of Section 67 in cases where provision of service is for a consideration which is not ascertainable then the value of taxable service shall be the amount as it may be determined in the prescribed manner. What are the situations where consideration is not ascertainable and what is the manner for determining the value in such cases are prescribed?**

There may be several situations wherein it may be difficult to determine the consideration received by service provider for provision of a service. Such situations can arise on account of several factors such as consideration of service being embedded in the total amount received as consideration for a composite activity involving elements of provisions of service and element of sale of goods or consideration for service being included in the gross amount charged for a particular transaction or consideration of service being wholly or partly in the nature of non-monetary consideration.

The manner has been prescribed under Service Tax (Determination of Value) Rules 2006. These rules inter-alia provide provisions in respect of the following situations:

Determination of value of service portion involved in execution of works contract.

Determination of value of service in relation to money changing.

Determination of value of service portion involved in supply of food and any other article of human consumption or any drinks in a restaurant or as outdoor catering.

Determination of value where such value is not ascertainable.

The said rules also specify certain expenditures or costs that are incurred by the service provider which have to be included or excluded

The said rules also specify certain commissions or costs that are received by the service provider that have to be included or excluded while arriving at the taxable value.

In addition to the Service Tax (Determination of Value) Rules 2006, certain sub-rules in rule 6 of the Service Tax Rules, 1994 also provide simplified compounded mechanism for determination of value of taxable services in specified situations.

These specified aspects of determination of value under the Service Tax (Determination of Value) Rules 2006 and the Service Tax Rules, 1994 have been dealt individually with in point nos. 8.2 to 8.7 below.

**8.1.10 In addition to the two set of rules explained in point no 8.1.9 above, that have a bearing on the valuation of services, are there any exemption notifications that exempt certain portion of the gross amount charged from levy of service tax or in other words provide for abatements to arrive at the value of taxable services?**

Yes. Earlier there were a number of exemption notifications that prescribed the abatements for various categories of services. As another measure of simplification now all such abatements for specified category of services have been merged into a single notification no 26/2102 – ST dated 20/6/12 which has been dealt with in point no. 8.8 below.

## 8.2 Valuation of service portion in execution of a works contract

Works contract has been defined in clause (54) of section 65B of the Act. Typically every works contract involves an element of sale of goods and provision of service. It is a well settled position of law, declared by the Supreme Court in BSNL's case [2006(2) STR 161 (SC)], that a works contract can be segregated into a contract of sale of goods and contract of provision of service. With a view to bring certainty and simplicity the manner of determining the value of service portion in works contracts has been provided in Rule 2A of the Service Tax (Determination of Value) Rules, 2006. In order to align this rule with the new system of taxation of services based on the negative list the old Rule 2A has been replaced by a new rule by the Service Tax (Determination of Value) Second Amendment Rules, 2012. The new provisions have been explained in this note

### 8.2.1 What is the manner of determination of value of service portion in execution of a works contract from the total contract?

The manner for determining the value of service portion of a works contract from the total works contract is given in Rule 2A of the Service Tax (Determination of Value) Rules, 2006. As per sub-rule (i) of the said Rule 2A the value of the service portion in the execution of a works contract is the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

Gross amount includes	Gross amount does not include
Labour charges for execution of the works	Value of transfer of property in goods involved in the execution of the said works contract. Note: As per Explanation (c) to the said sub-rule (i), where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract.
Amount paid to a sub-contractor for labour and services	
Charges for planning, designing and architect's fees	
Charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract	
Cost of consumables such as water, electricity, fuel, used in the execution of the works contract	
Cost of establishment of the contractor relating to supply of labour and services and other similar expenses relating to supply of labour and services	Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract
Profit earned by the service provider relating to supply of labour and services	

### 8.2.2. Is there any simplified scheme for determining the value of service portion in a works contract?

Yes. The scheme is contained in the clause (ii) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

As per this scheme the value of the service portion, where value has not been determined in the manner as provided in clause (i) of rule 2A (explained in point 8.2.1 above), shall be determined in the manner explained in the table below -

Where works contract is for...	Value of the service portion shall be...
(A) execution of original works	<b>forty percent</b> of the <b>total amount charged</b> for the works contract
(B) maintenance or repair or reconditioning or restoration or servicing of any goods	<b>seventy per cent</b> of the <b>total amount charged</b> including such gross amount
(C) in case of other works contracts, not included in serial nos. (A) and (B) above, including contracts for maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings.	sixty percent of the <b>total amount charged</b> for the works contract

**Important** – As per the Explanation (II) to clause (ii) of rule 2A of the said Rules ‘**total amount**’ referred to in the second column of the table above would be the sum total of 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 works contract, 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, as the case may be.

### **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 (II) 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 (I) 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 Rs.)
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.

### 8.3 Determination of value of service in relation to money changing

In services of money changing including sale and purchase of foreign currency the problem of valuation arises on account of the fact that as per normal trade practice in such services the consideration is inbuilt in the difference between the selling/buying rates and the Reserve Bank of India (RBI) reference rate for that currency at that time. Accordingly a separate Rule 2B provides for the manner of determination of value of service in relation to money changing.

#### 8.3.1 Would sale and purchase of foreign currency or money changing not be excluded from the definition of service as being transaction only in money?

No. As per Explanation 2 to clause (44) of Section 65B, which defines 'service', activity of conversion of one currency into another for which a separate consideration is charged would not get tantamount to a transaction only in money. In transactions of sale and purchase of foreign currency or money changing since a separate consideration is charged these would not be excluded from the definition of 'service'.

#### 8.3.2 What is the manner of determination of value of service in relation to money changing including sale and purchase of foreign currency?

If a currency is exchanged from or to Indian Rupees then, as per Rule 2B of the Valuation Rules, the value of taxable service shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the RBI reference rate for that currency. For example if US\$ 1000 are sold by a customer @ Rs55 per US\$ and RBI reference rate for US\$ is Rs.55.73 then the taxable value shall be Rs.730 (1000 x 0.73).

#### 8.3.3 How would the value be determined if the RBI reference rate for a currency is not available?

As per the first proviso to Rule 2B in case RBI reference rate for a currency is not available the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money.

#### 8.3.4 How would the value of taxable service be determined if foreign currency is exchanged for another foreign currency?

These situations are dealt with in second proviso to Rule 2B as per which in such situations the value of taxable service shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting one of the currencies into Indian Rupees on that day at the reference rate provided by RBI.

### **8.4 Valuation of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering.**

In terms of article 366(29A) of the Constitution of India supply of any goods, being food or any other article of human consumption or any drink (whether or not intoxicating) in any manner as part of a service for cash, deferred payment or other valuable consideration is deemed to be a sale of such goods. Such a service therefore cannot be treated as service to the extent of the value of goods so supplied. The remaining portion however constitutes a service. It is a well settled position of law, declared by the Supreme Court in BSNL’s case [2006(2)STR161(SC)], that such a contract involving service along with supply of such goods can be dissected into a contract of sale of goods and contract of provision of service. Since normally such an activity is in the nature of composite activity, difficulty arises in determining the value of the service portion. In order to ensure transparency and standardization in the manner of determination of the value of such service provided in a restaurant or as outdoor catering a new rule 2C has been inserted in the Service Tax (Determination of Value) Rules, 2006 by the amendment rules of 2012. This manner of valuation is explained in the points below.

#### **8.4.1 Are services provided by any kind of restaurant, big or small, covered by the manner of valuation provided in Rule 2C of the Valuation Rules?**

Yes. Although services provided by any kind of restaurant would be valued in the manner provided in Rule 2C, it may be borne in mind that the following category of restaurants are exempted –

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 airheating in any part of the establishment, at any time during the year, and which has a license to serve alcoholic beverage.

Below the threshold exemption

#### **8.4.2. How is the value of service portion to be determined in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering?**

The manner of determination of service portion in such an activity is very simple and is given in Rule 2C of the the Service Tax (Determination of Value) Rules, 2006. In terms of the said rule value of the service portion shall be determined in the following manner-

<b>Value of service portion in an</b>	<b>Shall be ..... percent of the total amount</b>
---------------------------------------	---------------------------------------------------

activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner.....	charged:
In a restaurant	40
As part of outdoor catering	60

**Important** - As per Explanation 1 to the said Rule 2C 'Total amount' (referred to in the second column of the table 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, as the case may be.

The clarification given in point no 8.2.5 above would, mutatis mutandis, apply to valuation in this case also.

#### **8.4.3. What are the restrictions, if any, on availment of Cenvat credit by such service providers?**

In terms of the Explanation 2 to Rule 2C of the Valuation Rules any goods meant for human consumption classifiable under chapters 1 – 22 of Central Excise Tariff are not 'inputs' for provision of such service. Cenvat Credit is, therefore, not available on these items. Availability of Cenvat credit on other inputs, input services and capital goods would be subject to the provisions of the Cenvat Credit Rules, 2004 including the provisions relating to reversal of credits contained in rule 6 of the said rules. It may be noted the sale of food in the restaurant would amount to clearance of exempt goods and thus the provisions of Rule 6 of Cenvat Credit Rules will be applicable.

#### **8.4.4 Would Rule 2C of the Valuation Rules also apply to determination of value of service portion in cases 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 place specially arranged for organizing a function?**

No. Rule 2C applies only in cases of restaurants and outdoor catering. For valuation of service portion where such supplies are made in any other premises like hotel, convention center, club, pandal, shamiana or any place specially arranged for organizing a function an abatement of 30% has been provided for in exemption notification no 26/2012-ST dated 20/6/12. For details please refer to serial no. 4 of the table in point no 8.8 below.

#### **8.5 Inclusion or exclusion from value of certain expenditure or costs borne by the service provider.**

Rule 5 of Service Tax (Determination of Value) Rules, 2012 lays down the details of expenditure and cost borne by the service provider which have to be included or excluded while determining the value of taxable service.

### **8.5.1 What is the expenditure or costs that are to be included in the value of taxable services as per rule 5 of the Valuation Rules?**

As per Rule 5 any expenditure or cost that are incurred by the service provider in the course of providing taxable services are treated as consideration for taxable service provided or agreed to be provided and shall be included in the value for the purpose of charging Service Tax on the said service.

However, Explanation to sub-rule (1) of Rule 5 clarifies that for the value of telecommunication services shall be the gross amount paid by the person to whom the service is actually provided (i.e. the subscriber).

### **8.5.2 Which costs or expenditure is to be excluded from the value of taxable service as per Rule 5?**

As per sub rule (2) of Rule 5 the expenditure or cost incurred by the service provider as a pure agent of the recipient of the service shall be excluded from the value of taxable service if all the following conditions are satisfied:

the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

the recipient of service is liable to make payment to the third party;

the recipient of service authorises the service provider to make payment on his behalf;

the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

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.

### **8.5.3 What is the meaning of pure agent?**

Pure agent has been defined in Explanation to sub-rule 2 of Rule (5) of the Valuation Rules as a person who-

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;

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;

does not use such goods or services so procured; and

receives only the actual amount incurred to procure such goods or services.

## **8.6 Cases in which commission, costs etc. received by the service provider will be included or excluded.**

Rule 6 of the Valuation Rules deals with specific situation where certain commission or costs received by the service provider would be included as part of the taxable service.

### **INCLUSIONS**

the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;

the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;

the amount of premium charged by the insurer from the policy holder;

the commission received by the air travel agent from the airline;

the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;

the reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;

the commission or any amount received by the rail travel agent from the Railways or the customer;

the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner;

the commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent; and

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

### **EXCLUSIONS**

initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;

the airfare collected by air travel agent in respect of service provided by him;

the rail fare collected by [rail travel agent] in respect of service provided by him;

interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable;

the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger;

accidental damages due to unforeseen action not relatable to the provision of service;

subsidies or grants disbursed by the Government, not in the nature of directly influencing the value of service.

(italics indicate the additions made in the Service Tax (Determination of Value) Second Amendment, Rules, 2012)

**Does the interest for delayed payment for provision of a service includable in the taxable value?**

No. In terms of clause (iv) of Sub-rule 2 of Rule 6 delayed payments of any consideration for provision of service is excluded from the value of taxable service.

**What is the scope of the exclusion entry related to accidental damages due to unforeseen actions not relatable to the provisions of service?**

This inclusion has been inserted vide the Service Tax (Determination of Value) Second Amendment Rules, 2012. In terms of this exclusion accidental damages are not to be included in the value of service provided the following two conditions are specified:

The damages are due to unforeseen actions.

The damages are not related to provisions of service.

Examples-

Insurance Companies provide insurance services to the clients for which the premium is charged. The premium charged is a consideration for the insurance service provided. However, in case due to an unforeseen action, like an accident etc., a compensation is paid by the insurance company to the client then the money would not be included as part of value of taxable service as it is not relatable to the provisions of service but is only in the nature of consequence of provisions of insurance service.

In case a landlord who has rented out his office building to a tenant receives compensation from the tenant for the damage caused to the building by an unforeseen action then such compensation would not form part of the value of taxable service related to tenant of his building as an unforeseen damage caused by the tenant is not relatable to provision of service of renting of the office building.

**8.6.3. What is the scope of the exclusion entry relating to subsidies and grants disbursed by the Government, not in the nature or directly influencing the value of service?**

This exclusion entry has also been inserted by the Service Tax (Determination of Value) Second Amendment Rules, 2012. A subsidy influences the price directly when the price goes down proportionately to the amount of subsidy. In terms of this exclusion any subsidy or grant disbursed by the Government cannot form part of the value of taxable service unless such subsidy or grant directly influences the value of such service.

## 8.7. Compounding schemes for determination of value under the Service Tax Rules, 1994.

In addition to the Service Tax (Determination of Value) Rules, 2006 various sub-rules Rule (6) of the Service Tax 1994 also provides for simplified compounding mechanism for determining the amount of service tax payable. These sub-rules either specify the service tax payable as a certain percentage of the gross amount of a specified sum received by the service provider or also provide for manner of determination of value of taxable service for other specified services. This facility is normally available as an option to the person responsible to pay service tax. These compounding schemes are tabulated below:

Sub-rule of rule 6	Specified service	Compounding scheme	Conditions
(7)	Services provided by an air travel agent	Pay an amount calculated at the rate of 0.6% of the basic fare (i.e. that part of the fare on which commission is normally paid to the travel agent by the airlines) in the case of domestic bookings, and at the rate of 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter	Option, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances
(7A)	An insurer carrying on life insurance business	Option to pay tax (i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service; (ii) in all other cases 3% of the gross amount of premium charged in the first year and 1.5% of the premium charged in the subsequent years.	Option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance
(7B)	Service of purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an	Option to pay an amount calculated at the following rate (a) 0.12 per cent. of the gross amount of currency exchanged for an amount upto rupees 100,000, subject to the minimum amount of rupees 30; and	The person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

	authorised dealer in foreign exchange or an authorized money changer	(b) rupees 120 and 0.06 per cent. of the gross amount of currency exchanged for an amount of rupees exceeding rupees 100,000 and upto rupees 10,00,000; and (c) rupees 660 and 0.012 per cent. of the gross amount of currency exchanged for an amount of rupees exceeding 10,00,000, subject to maximum amount of rupees 6000	
(7C)	Services by distributor or selling agent of promotion, marketing, organising or in any other manner assisting in organising lottery,	Option to pay- (i)Rs. 7000/- on every Rs. 10 Lakh (or part of Rs. 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw (If guaranteed prize payout is more than 80%) (ii)Rs. 11000/- on every Rs. 10 Lakh (or part of Rs. 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw (If guaranteed prize payout is less than 80%)	1. In case of online lottery, the aggregate face value of lottery tickets for the purpose of this sub-rule shall be taken as the aggregate value of tickets sold 2. The distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

### 8.8 Notified abatements for determining the taxable value.

All abatements available to services of specified categories have now been merged in one exemption notification no 26/2012-ST dated 20/6/12. In terms of the said notification, exemption is granted from so much of the service tax leviable, 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 following Table, of the amount charged (or in some cases of specified amount) 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:

Table

Sl.No.	Description of taxable service	%	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	70	CENVAT credit on any goods classifiable under chapter 1 to 22 of the Central Excise Tariff Act,



	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		1985 (5 of 1986) 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.
<b>Sl.No.</b>	<b>Description of taxable service</b>	<b>%</b>	<b>Conditions</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
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	10	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions

	accommodation for any person		of the CENVAT Credit Rules, 2004. The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. 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) services other than those specified in (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	25	(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 recipient.

**8.8.1 Once the specified description of services has been done away with in the negative list regime how would the scope of services specified by way of description in the said notification be determined?**

The services specified in the said notification, which have been tabulated in the table above, have been so specified in self-explanatory terms. In addition certain terms that have been used in the said notification are already defined in section 65B of the Act (like goods transport agency, vessel, port etc) and others have been defined in the said notification itself (like chit, package tour, tour operator and financial leasing).

**8.8.2 Would the gross amount charged for financial leasing services, including equipment leasing and hire purchase, also include the interest amount charged for such financial services?**

The gross amount charged for this service will be sum total of the following-

10% of the amount forming or representing interest; and

Other charges such as lease management fees, processing fees, documentation charges and administrative fees.

**8.9 Person responsible for determining the value of taxable service**

### **8.9.1 Who is the person responsible for determining the value of taxable service?**

Since Service Tax has to be paid by the persons responsible to pay Service Tax on the basis of self-assessment for value of taxable service has to be determined by the person responsible for payment of Service Tax in accordance with the provisions of Section 67 of the Act and rules made there under.

### **8.9.2 Can the value determined by the person responsible to pay service tax be rejected by the Department?**

Yes. In terms of the provisions of Section 73 of the Finance Act 1994 and Rule 4 of Service Tax (Determination of value) Rules 2006 the value works out by the service provider or any other person responsible for payment of service tax can be rejected by Central Excise Officer if he has specified that the value so determined is not in accordance with the provisions of the act or the Valuation Rules. In such a situation the Central Excise Officer shall issue a Show Cause Notice to the serviced provider or any other person responsible for payment of Service Tax to Show Cause as to why the value of such taxable service for the purpose of charging service tax should not be fixed on the amount specified in the notice. After giving reasonable options and heard, the Central Excise Officer shall determining the value of such taxable service for the purpose of charging service tax in accordance with the provisions of the Finance Act 1994 and the Valuation Goods.

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#### Guidance Note 9 – Rules of Interpretation

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Despite doing away with the service-specific descriptions, there will be some descriptions where some differential treatment will be available to a service or a class of services. Section 66F lays down the principles of interpretation of specified descriptions of services and bundled services. These are explained in paras below –

##### 9.1 Principles for interpretation of specified descriptions of services

Although the negative list approach largely obviates the need for descriptions of services, such descriptions continue to exist in the following areas –

In the negative list of services.

In the declared list of services.

In exemption notifications.

In the Place of Provision of Service Rules, 2012

In a few other rules and notifications e.g. Cenvat Credit Rules, 2004.

There are two principles laid down which are contained in clauses (1) and (2) of section 66F of the Act.

**9.1.1 What is the scope of the clause (1) of section 66F: ‘Unless otherwise specified, reference to a service (hereinafter referred to as the “main service”) shall not include reference to a service which is used for providing the main service’**

This rule can be best understood with a few illustrations which are given below –

‘Provision of access to any road or bridge on payment of toll’ is a specified entry in the negative list in section 66D of the Act. Any service provided in relation to collection of tolls or for security of a toll road would be in the nature of service used for providing such specified service and will not be entitled to the benefit of the negative list entry.

Transportation of goods on an inland waterway is a specified entry in the negative list in section 66D of the Act. Services provided by an agent to book such transportation of goods on inland waterways or to facilitate such transportation would not be entitled to the negative list entry.

**9.1.2 What is the scope of clause (1) of section 66F: ‘where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description’.**

This rule can also be best understood with some illustrations which are given below –

The services provided by a real estate agent are in the nature of intermediary services relating to immovable property. As per the Place of Provision of Service Rule, 2012, the place of provision of services provided in relation to immovable property is the location of the immovable property. However in terms of the rule 5 pertaining to services provided by an intermediary the place of provision of service is where the intermediary is located. Since Rule 5 provides a specific description of ‘estate agent’, the same shall prevail.

Pandal and Shamiana is an existing service and will remain a subject of taxation. Likewise service provided by way of catering is a taxable service and entitled to abatement. There is abatement when the two are provided in combination. Since the combination is more a specific entry than the two provided individually, there is no need to apply the later rule of bundled services, where the character could be judged by the service which provides it the essential character.

**9.2 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 wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

Two rules have been prescribed for determining the taxability of such services in clause (3) of section 66F of the Act. These rules, which are explained below, are subject to the provisions of the rule contained in sub section (2) of section 66F, viz a specific description will be preferred over a general description as explained in para 9.1.2 above.

**9.2.1 Services which are naturally bundled in the ordinary course of business**

The rule is – ‘If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character’

### **Illustrations -**

A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

Accommodation for the delegates

Breakfast for the delegates,

Tea and coffee during conference

Access to fitness room for the delegates

Availability of conference room

Business centre

As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service it is able to capture the entire essence of the package. Thus the service may be judged as convention service and chargeable to full rate. However it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.

### **9.2.2 Services which are not naturally bundled in the ordinary course of business**

The rule is – ‘If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a service which attracts the highest amount of service tax.’

### **Illustrations -**

- A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property.

### **9.2.3 Significance of the condition that the rule relating to ‘bundled service’ is subject to the provisions of sub-section (2) of section 66F.**

Sub-section (2) of section 66 lays down : 'where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description' (refer para 9.1.2 above). This rule predominates over the rule laid down in sub-section (3) relating to 'bundled services'. In other words, if a bundled service falls under a service specified by way of a description then such service would be covered by the description so specified. The illustration, relating to a bundled service wherein a pandal and shamiana is provided in combination with catering service, given in the second bullet in para 9.1.2 above explains the operation of this rule.

#### **9.2.4 Manner of determining if the services are bundled in the ordinary course of business**

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.

Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are -

There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.

The elements are normally advertised as a package.

The different elements are not available separately.

The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

## **9.2.5 Manner of determination of taxability of ‘composite transactions’ wherein an element of provision of service is combined with an element of sale of goods**

Please refer to **point no 2.6.3 of this Guidance Note.**

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## **Guidance Note 10 – Miscellaneous**

### **10.1 Partial Reverse Charge**

With effect from 1.7.2012 a new scheme of taxation is being brought into effect whereby the liability of payment of service tax shall be both on the service provider and the service recipient. Usually such liability is affixed either on the service provider or the service recipient, but in specified services and in specified conditions, such liability shall be on both the service provider and the service recipient.

The enabling provision has been provided by insertion of proviso to section 68 in the Finance Act, 2012 as per which Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of Chapter V shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider. Under this clause the Central government has issued notification no. 30/ 2012 dated 20.6.2012 notifying the description of specified services when provided in the manner so specified where part of the service tax has to be paid by the service receiver. The extent to which tax liability has to be discharged by the service receiver has also been specified in the said notification.

The manner of operation of the reverse charge mechanism has been explained in this point.

#### **10.1.1 What are the services on which such partial reverse charge mechanism shall be applicable?**

In terms of serial nos. 7(b), 8 and 9 of the table in notification no. 30/2012 dated 20.6.12, the new partial reverse charge mechanism is applicable to 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 a similar business, or

supply of manpower for any purpose, or

service portion in execution of a 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 a body corporate located in the taxable territory. Thus the nature of the service and the status of both the service provider and service receiver are important to determine the applicability of partial reverse charge provisions.

#### **10.1.2 What does a service provider need to indicate on the invoice when he is liable to pay only a part of the liability under the partial reverse charge mechanism?**

The service provider shall issue an invoice complying with Rule 4A of the Service Tax Rules 1994. Thus the invoice shall indicate the name, address and the registration number of the service provider; the name and address of the person receiving taxable service; the description and value of taxable service provided or agreed to be provided; and the service tax payable thereon. As per clause (iv) of sub-rule (1) of the said rule 4A "the service tax payable thereon' has to be indicated. The service tax payable would include service tax payable by the service provider.

### **10.1.3 If the service provider is exempted being a SSI (turnover less than Rs 10 lakhs), how will the reverse charge mechanism work?**

The liability of the service provider and service recipient are different and independent of each other. Thus in case the service provider is availing exemption owing to turnover being less than Rs 10 lakhs, he shall not be obliged to pay any tax. However, the service recipient shall have to pay service tax which he is obliged to pay under the partial reverse charge mechanism.

### **10.1.4 Will the credit of such tax paid be available to the service recipient?**

Normally, the credit of the entire tax paid on the service received by the service receiver would be available to the service recipient subject to the provisions of the CENVAT Credit Rules 2004. The credit of tax paid by the service provider would be available on the basis of the invoice subject to the conditions specified in the CENVAT Credit Rules 2004. The credit of tax paid by the service recipient under partial reverse charge would be available on the basis on the tax payment challan, again subject to conditions specified in the said Rules.

### **10.1.5 What shall be the point of taxation for the service recipient? When will he need to pay the service tax in respect of his liability?**

Both the service provider and service recipient are governed by the Point of Taxation Rules 2011 in respect of the service provided or received by him. Usually it is the invoice or date of receipt of payment which is the point of taxation for the service provider. However for the service recipient, in terms of rule 7 of the said rules, point of taxation is when he pays for the service. Thus in the case where the invoice is issued in say July 2012 and the service recipient pays for the same in August 2012 the point of taxation for the service provider will be the date of issue of invoice in July 2012. The point of taxation for the service recipient shall be the date of payment in August 2012. The service provider would be required to pay tax (to the extent liability is affixed on him) by 5<sup>th</sup>/6<sup>th</sup> August, 2012 or 5<sup>th</sup>/6<sup>th</sup> October 2012 depending upon the admissibility of benefit under the proviso to rule 6 of the Service Tax Rules 1994. The service recipient would need to pay tax (to the extent liability is affixed on him) by 5<sup>th</sup>/6<sup>th</sup> September 2012.

### **10.1.6 How is the service recipient required to calculate his tax liability under partial reverse charge mechanism? How will the service recipient know which abatement or valuation option has been exercised by the service provider?**

The service recipient would need to discharge liability only on the payments made by him. Thus the assessable value would be calculated on such payments done (Free of Cost material supplied and out of pocket expenses reimbursed or incurred on behalf of the service provider need to be included in the assessable value in terms of Valuation Rules). The invoice raised by the service provider would normally indicate the abatement taken or method of valuation used for arriving at the taxable value. However



since the liability of the service provider and service recipient are different and independent of each other, the service recipient can independently avail or forgo an abatement or choose a valuation option depending upon the ease, data available and economics.

### **10.1.7 Is the reverse charge applicable on services provided and complete before**

#### **1.7.2012 though payments were made after 1.7.2012?**

For any service whose point of taxation has been determined and whole liability affixed before 1.7.2012 the new provisions will not apply. Merely because payments are being made after

1.7.2012 will not add any additional liability on the service receiver in respect of such services.

### 10.2 Export of Services

#### **10.2.1 What does the export of a service mean under the new system?**

Export of services shall now be governed by new provisions in the Service Tax Rules 1994, namely rule 6A. The essential requisites before a service can be designated as export service are:

It must be a service as defined under sub-section 44 of section 65B

by a service provider located in the taxable territory

to a service receiver located outside India

the service is not a service specified in the negative list

the place of provision of the service is outside India

the payment for such service is received by the service provider in convertible foreign exchange

the service provider and service receiver are not merely establishments of a distinct person by virtue of item (b) of Explanation 2 of clause 44 of section 65B of the Act

The answer to all questions above must be yes to avail the status of export of service.

#### **10.2.2 Can there be an export between an establishment of a person in taxable territory and another establishment of same person in a non-taxable territory?**

No. Even though such persons have been specified as distinct persons under the explanation to clause (44) of section 65B, the transaction between such establishments have not been recognized as exports under the above stated rule.

### 10.3 ISD: Input Service Distributor

The facility of registering as an input service distributor exists to allow businesses to operate at their convenience and allow centralized procurement of services and the distribution of credit to units where such services are used. The provisions have been slightly altered in Budget 2012 to align the practice with the intent stated above.

#### **10.3.1 Credit of which services can be distributed?**

Credit of only “input services” can be distributed. Hence a service procured needs to be assessed whether it is an “input service” at any of the units of the ISD. Only if it qualifies as an “input service” it can be distributed. Further the credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services cannot be distributed.

### **10.3.2 How do I calculate the credit to be distributed?**

While the status of the service as “input service” is ascertained, the units where it is used is also ascertained. The credit of a service used exclusively in one unit can be distributed only to that unit. If it is used in more than one unit, the credit can be distributed proportionate to the turnover of the units. The total turnover shall be determined in the same manner as determined under rule 5 and shall be determined for the month previous to the month during which the CENVAT credit is distributed. In case if any of its unit pays tax or duty on quarterly basis as provided in rule 6 of Service Tax Rules, 1994 or rule 8 of Central Excise Rules, 2002 then the relevant period shall be the quarter previous to the quarter during which the CENVAT credit is distributed. The turnover so calculated would be ex-duty i.e not inclusive of the taxes and duties on the goods and services supplied.

e.g. a company manufactures fans in 2 units and other appliances in 2 other units. Advertisement services for fans would qualify as an input service for the units manufacturing fans and hence could be distributed to such units based on the turnover of the previous month of the 2 units.

### **10.3.3 How do I distribute credit in a new unit when there is no turnover?**

In case of an assessee who does not have any total turnover in the said period as in the case of a new company, the ISD shall distribute any credit only after the end of such relevant period wherein the total turnover of its units are available. In case of a new unit wherein any credit is exclusively used, the credit can be distributed in total to such unit.

### **10.3.4 Will such credit which is distributed need to be reversed on account of any exempted turnover?**

Credit so distributed is availed on the strength of a challan issued by the ISD. It shall be subject to rule 6 of CENVAT Credit Rules 2004 and depending upon the option exercised under the rule 6 due reversals will be required to be effected by the unit to which the credit has been distributed.

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## **Exhibit A1 : Negative List of Services.**

Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere:

services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;

services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

transport of goods or passengers; or

support services, other than services covered under clauses (i) to (iii) above, provided to business entities.

Services by the Reserve bank of India.

Services by a foreign diplomatic mission located in India.

Services relating to agriculture or agricultural produce by way of –

agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;

supply of farm labour;

processes carried out at an 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 make it only marketable for the primary market;

renting or leasing 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 by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.

Trading of goods.

Any process amounting to manufacture or production of goods.

Selling of space or time slots for advertisements other than advertisements broadcast by radio or television.

Service by way of access to a road or a bridge on payment of toll charges.

Betting, gambling or lottery.

Admission to entertainment events or access to amusement facilities.

Transmission or distribution of electricity by an electricity transmission or distribution utility.

Services by way of –

pre-school education and education up to higher secondary school or equivalent; (ii) education as a part of a curriculum for obtaining a qualification recognized by law;

(iii) education as a part of an approved vocational education course.

Services by way of renting of residential dwelling for use as residence;

Services by way of –

extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

inter-se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

Service of transportation of passengers, with or without accompanied belongings, by –

a stage carriage;

railways in a class other than –

first class; or

an air conditioned 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;

Services by way of transportation of goods –

by road except the services of – (A) a goods transportation agency; or

(B) a courier agency;

by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or

by inland waterways;

Funeral, burial, crematorium or mortuary services including transportation of the deceased.

## **Exhibit A2 : Place of Provision of Services Rules, 2012**

Notification No. 28/2012 - Service Tax dated 20/6/12

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 66C and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 9/2005-ST, dated the 3<sup>rd</sup> March, 2005 published in the Gazette of India Extraordinary, Part II, ...vide number G.S.R. 151 (E) dated the 3<sup>rd</sup> March, 2005 and the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 11/2006-ST dated the 19<sup>th</sup> May, 2006 published in the Gazette of India Extraordinary, Part II, Section 3, Sub-Section (i) vide number G.S.R. 227 (E) dated the 19<sup>th</sup> May, 2006., except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules for the purpose of determination of the place of provision of services, namely:-

**Short title, extent and commencement.**- (1) These rules may be called the Place of Provision of Services Rules, 2012.

(2) They shall come into force on 1st day of July, 2012.

**Definitions.**- In these rules, unless the context otherwise requires,-

“Act” means the Finance Act, 1994 (32 of 1994);

“account” means an account bearing interest to the depositor, and includes a nonresident external account and a non-resident ordinary account;

“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);

“continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued;

“financial institution” has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) between two or more persons, but does not include a person who provides the main service on his account.;

“leg of journey” means a part of the journey that begins where passengers embark or disembark the conveyance, or where it is stopped to allow for its servicing or refueling, and ends where it is next stopped for any of those purposes;

“location of the service provider” means-

(a). where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the service provider is not covered under sub-clause (a):

the location of his business establishment; or

where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or

where services are provided from more than one establishment, whether business or fixed, the establishment most directly concerned with the provision of the service; and

in the absence of such places, the usual place of residence of the service provider.

“location of the service receiver” means:-

(a). where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the recipient of service is not covered under sub-clause (a):

the location of his business establishment; or

where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or

where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and

in the absence of such places, the usual place of residence of the recipient of service.

Explanation:-. For the purposes of clauses (h) and (i), “usual place of residence” in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

Explanation 2:-. For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.

“means of transport” means any conveyance designed to transport goods or persons from one place to another;

“non-banking financial company” means-

a financial institution which is a company; or

a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or

such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;

“online information and database access or retrieval services” means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;

“person liable to pay tax” shall mean the person liable to pay service tax under section 68 of the Act or under sub-clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994;

“provided” includes the expression “to be provided”;

“received” includes the expression “to be received”;

“registration” means the registration under rule 4 of the Service Tax Rules, 1994;

“telecommunication service” means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services.

words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

**Place of provision generally.-** The place of provision of a service shall be the location of the recipient of service:

Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

**Place of provision of performance based services.-** The place of provision of following services shall be the location where the services are actually performed, namely:-

services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

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

**Place of provision of services relating to immovable property.-** The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

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

**Place of provision of services provided at more than one location.-** Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

**Place of provision of services where provider and recipient are located in taxable territory.-** Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

**Place of provision of specified services.-** The place of provision of following services shall be the location of the service provider:-

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

Online information and database access or retrieval services;

Intermediary services;

Service consisting of hiring of means of transport, upto a period of one month.

**Place of provision of goods transportation services.-** The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

**Place of provision of passenger transportation service.-** The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

**Place of provision of services provided on board a conveyance.-** Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

**Powers to notify description of services or circumstances for certain purposes.** In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

**Order of application of rules.-** Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, 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.

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## Exhibit A3 : Exemptions under Mega Notification.

- A.** The following taxable services have been exempt from the whole of the service tax leviable thereon under section 66B of the said Act vide mega exemption notification no. 25/2012 – ST dated 20/6/12 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 or by an educational institution in respect of education exempted from service tax, by way of, (b) auxiliary educational services; or

- (c) 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 Kreedha 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 65 B 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 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
  - (d) a pollution control or effluent treatment plant, except located as a part of a factory;or
  - (e) 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 coldstorages 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. Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;
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 (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;
20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -
- (a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
  - (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
  - (c) defence or military equipments;

- (d) postal mail or mail bags;
  - (e) household effects;
  - (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 transportation of (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- (b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
  - (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;
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. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;
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 or an aircraft;

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;
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 distributor or a selling agent;
  - (f) selling agent or a distributor 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 bovine 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.
- B. Definitions.** - For the purpose of the notification, unless the context otherwise requires, certain terms used in the notification have been defined in the notification itself –
- (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 stockbroker (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 midday 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; or
  - (v) advancement of any other object of general public utility up to a value of,-
    - (a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;
    - (b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;
- (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).

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# **Taxation of Services: An Education Guide**

## **ERRATA**

1. In Q 2.9.1 the expression “employer to the employee” may be read as “employee to the employer”
2. In Q 7.11.18 the answer may read as “If you are using these services in relation to any purpose other than commerce, industry or any other business or profession, you are not required to pay tax under reverse charge since the same is exempt.”
3. In answer to Q 2.4.2 the expression “Explanation 2” maybe read as “Explanation 3”
4. In answer to Q 10.2.1 the expression “Explanation 2” maybe read as “Explanation 3”



