Compliances of Service Tax in Banking Sector

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

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Foreword

Service tax was first introduced in 1994 based on the recommendations of Dr Raja Chelliah Committee on Tax Reforms. Dr. Manmohan Singh, the then Union Finance Minister, in his Budget speech said that "There is no sound reason for exempting services from taxation, when goods are taxed and many countries treat goods and services alike for tax purposes. The Tax Reforms Committee has also recommended imposition of tax on services as a measure for broadening the base of indirect taxes. I, therefore, propose to make a modest effort in this direction by imposing a tax on services of telephones, non-life insurance and stock brokers."

Since then the successive Finance Ministers widened the service tax net by bringing new services under its ambit. In the year 2012, all the services were brought into the service tax net, barring a few that have been specifically mentioned in the negative list. Revenue from service tax has also increased steadily over the years.

Considering that no significant material is available for providing guidance to the members to check the compliance of service tax in banking industries. I am, therefore, extremely happy to note that Indirect Taxes Committee has taken this initiative to prepare this publication titled *"Compliances of service tax in Banking Industries"* which would seal this gap and assist members in verifying service tax compliance by Banks specially while doing the Bank Branch/Central Statutory and Concurrent Audit.

I congratulate the Indirect Taxes Committee for this splendid work and in particular, CA. Atul Gupta, Chairman, Indirect Taxes Committee, CA. Nihar Niranjan Jambusaria Vice Chairman and the Committee members for successfully completing the task in a very short span of time.

I am sure that the members would find this publication immensely useful while providing their services to the Banking Industries as an auditor or otherwise.

Date: March 03, 2014
New Delhi

CA. K. Raghu
President

Message from Vice President

The service sector, also called the tertiary sector, is one of the part of the economy in the three-sector hypothesis (Primary, Secondary & Service). Activities in the service sector include retail, banks, education, health, social work etc. They need to keep ahead of other businesses by understanding what it is their customers want and be in a position to give it to them quickly and at low cost. One good example of this are banks which have gone through enormous changes in recent years. Due to their influential status within the financial system and upon national economies, banks are highly regulated in India. Be it taxation or economic growth, Banks are under a constant check.

Since July 2012, Service Tax is levied on all the service(s) except the ones barred by the Negative List, which has increased the compliances However, there are minimal guiding principles available with the members to check upon the compliances of service Tax while conducting the Bank, Branch/ Statutory and Concurrent Audit of banking industries. Thus, it gives me an enormous delight to inform you that Indirect Taxes Committee has come up with a cautionary guide titled *"Compliances of Service Tax in Banking Industries"* to assist its members to abide by Service Tax requirements while undertaking various Bank Audits.

I sincerely appreciate the efforts of the Indirect Tax Committee for this constructive step. This guide would assist the members by enhancing their knowledge and skills to cater to the service tax requirements while performing Bank audits. I am sure this publication would prove be extremely handy and a great time saver in the long run.

Date: March 03, 2014

Place: Chennai

CA. Manoj Fadnis

Vice-President

Message from Chairman and Vice Chairman

The service sector has been growing at a higher rate than agriculture and manufacturing sector. This sector covers a wide range of activities, such as trading, transportation, communication, financial, real estate, business services etc. The Banking industry, which mainly undertakes financial transactions, is an important segment of the service sector and its contribution towards GDP is continuously increasing.

The taxation of services has also undergone a paradigm shift from positive list to negative list in the year 2012. Post implementation of taxation of services based on negative list, it has become imperative for the auditor to check and examine each and every banking activity to ensure service tax compliance not only on revenue side but also for compliances on expenditure side by way of reverse charge mechanism. Considering the nature and varieties of transactions which banking industries have been taking, the assignment of auditing of banking industries has become important.

Considering these intricacies, the Indirect Taxes Committee thought it fit to publish a publication titled *"Compliances of service tax in Banking Industries"* which will help the members in checking the transaction of the bank to ensure compliance of service tax, wherein committee have come up with a checklist with relevant provisions applicable on banking so as to assist member in quick review of compliances under Service Tax.

We would like to place our sincere appreciation to CA. Sumit Mishra for preparing basic drafts of the publication. We are also thankful to CA. K. Raghu, President and CA. Manoj Fadnis, Vice-President, ICAI for their support and encouragement to the initiatives of the Indirect Taxes Committee and to all the members of the Indirect Taxes Committee for their support and suggestions in this initiative.

We trust this publication will facilitate members in bank audit assignments and will be of immense use to them. We look forward to feedback from members for further improvements in this publication at idtc@icai.in

Date: March 03, 2014

Place: New Delhi

CA. Nihar Niranjan Jambusaria
Vice-Chairman
Indirect Taxes Committee

CA. Atul Gupta
Chairman
Indirect Taxes Committee

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Questionnaire for Service Tax Audit of Banks

Name of the Branch:

Service Tax Code:

Particulars/information for the year……..

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	(b) Branches (Registered or Unregistered with Service Tax Department) & Enclosed list in case of large number of branches	:	
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5.	List principal activities	:	
6.	(a) Is there any change in the activities stated above during the year as compared to immediately preceding year? Whether the same is included in registration.	:	

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	Cab Hiring Charges		
	Manpower Supply- Such as temporary hiring of office staff or housekeeping staff.		
	Security Services- Like security alarm, security Guard- also require to check the status of provider (govt. agency or other agency), any other expenses for security, etc.		
	Sponsorship		
	Legal services advocates- such as law charges		
	Services Received from Govt.		
	Goods Transportation Charges		
	(b) Is Rule 2(1)(d) of Service Tax Rules, 1994 is followed ? (*Refer Appendix I , Pg. 7)*		
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32.	Is the payment for services exported received by the service provider in convertible foreign currency within the time limit prescribed by RBI? If not, give details.	:	
Place: Date:			**Signed

NAME OF THE ASSESSEE

ANNEXURE A

RECONCILIATION OF TURNVOER FOR THE YEAR……..

S. No	Particulars	
A	Total Taxable Turnover Service 1 Service 2	
B	Total Non-Taxable Turnover	
C	Grand Total	
D	Advance as on 31st March ……..	
E	The amount on which the service tax amount that is to be calculated (C+E)	
F	Service Tax at the rate specified under section 66 Service Tax at the rate after abatement (Refer Appendix IV)	
G	Service Tax	
H	Education Cess	
I	Secondary & higher education Cess	
	Total Service Tax liability payable Mode of Payment	
J	Paid Through CENVAT Paid In cash (*Details in Annexure B*)	
K	Difference (J-H)	

NAME OF THE ASSESSEE

ANNEXURE B

DETAILS OF CHALLAN FOR THE YEAR……

S. No	Nature of Service	For the Month	BSR No.	Date	Challan No.	Tax Amount	Service Tax	Education Cess	H. Cess	Interest
1.										
2.										

NAME OF THE ASSESSEE

ANNEXURE C

DETAILS OF CENVAT TAKEN, UTILIZED AND REVERSED DURING THE YEAR……

	Cenvat taken as per books of accounts			Cenvat credit taken as per return			Difference in cenvat taken	Cenvat credit utilized as per books			Cenvat credit utilized as per return			Difference in cenvat utilization	Cenvat credit reversed as per books			Cenvat credit reversed as per return			Difference in cenvat reversal
	Inputs	Input services	Total credit taken	Inputs	Input services	Total credit taken		Inputs	Input services	Total credit utilized	Inputs	Input services	Total credit utilized		Inputs	Input services	Total credit utilized	Inputs	Input services	Total credit reversed	
Apr																					
May																					
Jun																					
Jul																					
Aug																					
Sep																					
Oct																					

Nov																					
Dec																					
Jan																					
Feb																					
Mar																					

NAME OF THE ASSESSEE:

ANNEXURE D

CENVAT Credit Register

S. No	Date of Invoice	Invoice No.	Party Name & Address	ST Registration Number	Service Type	Description	Date on Which Credit is availed	Gross Amount	Service Tax	Invoice Amount	Payment Date	Check Amount
1												
2												
3												
4												
5												
6												

Clarification regarding Questionnaire for Service Tax Audit of Banks

Point No. 2 & 3: As per Rule 4 of the Service Tax Rules, 1994, an assessee having multiple offices may take a centralized registration. With reference to the checklist, an auditor should check, whether the concerned branch is registered with the department and the centralized registration certificate has been obtained or not? To check registration details we may log in into www.aces.gov.in by using client's user id and password.

Further, a service receiver is liable to make payment as a recipient by virtue of Section 68(2) of the Finance Act, 1994. Being an auditor, we should check whether concerned branch is also registered as a service recipient or not and whether related services are registered with the department.

Point No.5: In order to understand the taxability of various services provided by the concerned branch/head office, it is important to identify the various services provided by such branch or head office. For this purpose the auditors may analyse the various income heads (Operating and Non Operating).

Point No.6: It is important to check whether any new service is provided by the concerned branch or head office. If yes, being an auditor we can check whether the same is updated in the Service Tax registration certificate or not? It becomes important because taxability of any activity depends upon its nature and any exemption or relief will be available accordingly.

Point No.8: Rule 5 of the Service Tax Rules, 1994 provide for the documents to be maintained by the assessee and Rule 5(2) provides that every assessee maintaining such records will intimate the department about such records. Being an auditor, we can check whether concerned branch is maintaining proper records and whether the same is intimated to the department within the time prescribed under such rules? *(Please refer Rule 5 of Service Tax Rules 1994, Appendix I)*

Point No.10: The applicability of Finance Act, 1994 is to whole of India except Jammu and Kashmir? It is important to check whether taxability of services provided to a customer is determined by applying Place of Provision Rules, 2012 (Appendix III) or not? For example: A customer is located in Jammu and Kashmir and having its bank account in Baddi Branch, Himanchal, in such case we can check whether service tax is charged on transaction between concerned

branch and customer. This transaction will be taxable by virtue of Rule 9 of the Place of Provision Rules, 2012.

Point No.11: Finance Act, 1994 has provided various exemptions vide Mega Exemption Notification 25/ 2012-ST as well other notification such as services to SEZ developer and units, diplomats etc. If the concerned branch has claimed benefit of any such exemption then being an auditor we can ask for the relevant documents/certificate as prescribed under relevant notification.

Relevant Exemption Notification:

1. 25/2012-ST-Mega Exemption Notification- Services provided to WHO, International Organization etc.;
2. 27/2012-ST-Services provided to Diplomat;
3. 40/2012-ST and 45/2012-ST and 12/2013-ST- Services provided to SEZ units and SEZ Developers

Point No.13: Transaction in money has been excluded from the definition of service as defined under Section 65B (44) of the Finance Act, 1994. However, it is also provided that if any separate consideration is charged by the service provider, then the same will be taxable and service tax shall be payable on such separate consideration.
For eg. A is carrying 40$ and wants to convert it in to INR. A approaches to a bank and get an amount of Rs. 40*60=Rs.2400. In this case, no separate consideration is charged by the bank and the transaction is merely a transaction in money. However, if the bank recovers an additional amount say Rs. 100 for the same, it will be liable to service tax payment.

Point No.14: Securities /Derivatives has been included under the definition of goods as defined under Section 65B (25) of the Finance Act, 1994. Transaction in instruments are not taxable however, any sort of service charge collected by the service provider for such transaction shall be liable for the payment of service tax.
Being an auditor, we can check whether service tax is paid by the concerned branch on amount recovered as an additional consideration.

Point No.15: Any services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discounts is mentioned in the negative list of services. However, if any additional amount is charged over and above interest or discounts the same would represent taxable consideration.

Services covered under this exemption category 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 and advances are represented by way of interest or discount.

Being an auditor, we can check whether any additional amount is recovered by the concerned branch/head office and the same is accounted for separately instead of treating it as a component of interest/ advance.

Point No.17: Late fee charged for the delayed payment of any consideration for the sale of goods or provision of services has been specifically excluded from the Rule 6 of the Service Tax (Determination of Value) Rules, 2006.However, charges received in case of credit card are in the nature of consideration for the services rendered for using the convenience of services by way of a credit card and hence taxable.

Being an auditor, we can check whether such late payment charges recovered by the concerned branch are not shown as interest. These charges are taxable and service tax shall be levied on the same.

Point No. 18: A services receiver is liable to pay Service Tax under reverse charge mechanism under Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994. In order to identify the portion of Service Tax payable by the service recipient, it is important to clearly define the nature of services received. This point requires auditors to check the nature and description of services received by the concerned branch/head office.

Sub-points to Point No. 18:

- Works Contract Services- Works contract service is defined under Section 66B (54). Works contract service is mentioned under Notification No. 30/2012-ST which provides for joint charge and signifies the proportion of

Compliances of Service Tax in Banking Industries

Service Tax payable by service provider or the service receiver. Section 66B(54) defines works contract as follows:

"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";*

Further, the valuation of works contract services will be done by applying Service Tax (Determination of Value) Rules, 2006. Rule 2A(i) provides that if value of services and goods supplied is separable in that case, service tax will be charged only on the service value. However, in case the value of goods and services is inseparable, the value of services shall be determined in accordance with Rule 2A(ii) which provides as follows:

(A)	Original works (i.e. new construction, erection, commissioning, installation)	40% of 'total amount'
(B)	Maintenance or repair or reconditioning or restoration or servicing of any goods	70% of 'total amount'
(C)	Other works contracts (other than (A) and (B) including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, plastering, floor and wall tiling, installation of electrical fittings of an immovable property	60% of 'total amount'

Being an auditor, we can check whether the concerned branch is correctly paying its portion of service tax liability as mentioned under Notification No. 30/2012-ST under works contracts services.

For Example: An invoice of *original works* contract service is received by the concerned branch. Here the service provider must be an individual, partnership or HUF but not a corporate:

(i) The value of goods is separable:

Material:	Rs. 500
Service:	Rs. 100
Vat @10%:	Rs. 50
Service Tax @12%:	Rs. 12
Total:	Rs. 662

In this case, service tax is payable by the service recipient as well as the service provider in a proportion mentioned in the notification i.e. 50% of the service tax liability which amounts to Rs. 6.

(ii) The value of goods is inseparable

Material & Labour:	Rs. 500
Vat @10% on 70% value*:	Rs. 35
Service Tax @12% on 30%:	Rs. 18
Total:	Rs. 553

* This may vary as per the State VAT laws

In this case, service tax is payable by the service recipient as well as the service provider in a proportion mentioned in the notification i.e. 50% of the service tax liability. However, it is to be noted that service tax charged on invoice by the service tax provider may or may not be in compliance to the service tax determination of value rules 2006. Service Tax Determination of Value Rules 2006 provide that in case of original works if the value of service and goods is inseparable, the service portion will be 40% of the total value of invoice and by virtue of that a service recipient is liable to pay services tax as follows:

Goods & Service Tax:	Rs. 500
VAT@ 10% on 70% value:	Rs. 35
Service Tax@12% on 40%:	Rs. 24
Total:	Rs.559

Liability of service recipient: 50% of Rs, 24 i.e. Rs. 12 and not 50% of Rs. 18 i.e. Rs.9

➢ Cab Hire Charges - As per Rule 2(1)(d), a service recipient is liable to pay Service Tax under reverse charge mechanism in proportion as mentioned under Notification No.30/2012-ST which is illustrated as follows:

Eg. Invoices from the service provider of rent a cab can be of three types:

Particulars	Amount (Rs.)	Amount (Rs.)	Amount (Rs.)	Remark
Hiring Charges	100	100	100*	
Abatement:	60	-	-	Abatement is taken by the service provider as per Notification No. 26/2012-ST
Service Tax	4.8	12	-	
Total Value	104.8	112	100	
Liability of service Recipient	4.8	4.8	4.8	Liability of service recipient is restricted to 40% value of Gross amount of invoices
Liability of Service provider	-	7.2	-	

* In this case, service provider is not a registered assessee.

➢ Manpower Supply - As per Rule 2(1) (d), a service recipient is liable to pay service tax under reverse charge mechanism in proportion as mentioned under Notification No.30/2012-ST.

Manpower Supply is defined under Rule 2(1)(g) of the service tax rules, 1994 which provides as follows:

"Supply of Manpower– temporarily or otherwise to another person to work under his superintendence or control"

It denotes that if the manpower is deputed in the concerned branch/head office in a manner that his/her control lies with the branch/head office itself in that case it will be covered under reverse charge mechanism and service tax liability shall be discharged in a proportion mentioned under Notification No. 30/2012-ST. Further, contract is of utmost importance to understand whether a contract is for supply of manpower or such contract is job specific. For eg. A contract requiring the contractor to provide specific level of cleaning services and also specifying the number of person to be deputed but does not empower the branch to guide or monitor the work , the same will not be treated as manpower supply, instead it is merely a job specific contract. On the contrary, the same contract can be executed without specifying the nature of service although the deputed staff can be assigned a job of cleaning the office premises to the satisfaction of the management, it will be treated as manpower supply.

Being an auditor, we can check whether concerned branch is paying service tax liability under reverse charge mechanism if the same is qualified as manpower supply.

- Security Service - As per Rule 2(1)(d), a service recipient is liable to pay service tax under reverse charge mechanism in proportion as mentioned under Notification No.30/2012-ST as amended by Notification .No. 45/2012-ST

Security Service is defined under Rule 2(1)(fa) of the service tax rules, 1994 which provides as follows:

"Security service means service relating to security of any property whether movable or immovable of any person in any manner and includes the services of investigation, detection or verification of any facts or activity"
Hence, any service received by the concerned branch/head office in the nature of security, investigation or verification shall be covered here and service tax shall be payable under reverse charge mechanism. Being an auditor, we can check whether service tax is being paid by the concerned branch/head office in compliance to the Notification No. 30/2012-ST.

➢ Sponsorship Service - As per Rule 2(1)(d)(c), a service recipient is liable to pay service tax under reverse charge mechanism in proportion as mentioned under Notification No.30/2012-ST wherein service tax shall be payable by the service recipient in case service provided or agreed to be provided by way of sponsorship to any body corporate or partnership firm located in the taxable territory.

Sponsorship is not defined in the act after the introduction of negative list of services however it was defined under Section 65(99a) and the same can be borrowed for determining the taxability post introduction of negative list of services.

Section 65(99a) provides that sponsorship includes naming an event after the sponsor displaying the sponsors company logo or trading name giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in form of donation or gifts, given by the donor subject to the condition that the service provider is under no obligation to provide anything in return to such donors"

Hence, being an auditor, we can check whether concerned branch/head office is correctly paying service tax liability in proportion as mentioned under Notification No. 30/2012-ST.

Legal Service - As per Rule 2(1)(d)(D), a service recipient is liable to pay service tax under reverse charge mechanism in proportion as mentioned under Notification No.30/2012-ST in case service is provided or agreed to be provided by an arbitral tribunal or an individual advocate or firm of advocates by way of legal services to any business entity located in taxable territory.

However, it is to be noted that a stay was granted by the Hon'ble Delhi High Court regarding the taxability of services provided by an Advocate.

Being an auditor, we can check whether concerned branch is discharging its service tax liability in accordance with the rules and also whether it has taken the benefit of stay order. We can high light the exposure if service tax is not paid on the basis of stay order.

Point 19(b)-The point of taxation Rules, 2011 provides the point of time when the service shall be deemed to be provided. This rule helps us in determining the rate of tax to be applied and date of payment of Service Tax. Refer Appendix IV of the books for Point of Taxation Rules, 2011. Further liability to pay tax is

earlier of payment to service provider or six month from date of Invoice in case of reverse charge mechanism.
Being an auditor, we can check whether the rate of tax and date of payment of service tax is determined on the basis of point of taxation in compliance to the Point of Taxation rules, 2011.

Point 20: A service provider dealing in the sale or purchase of foreign currency has the option to pay service tax in a manner as mentioned under Rule 6(7B) of the Service Tax Rules, 1994 instead of discharging its service tax liability at the rate prescribed under Section 66B. Please refer Appendix I for Rule 6(7B).

Points 23 & 27 & 28: Rule 7 of the CENVAT Credit Rules, 2004 provides for the distribution of CENVAT credit by the input service distributor to its branches. There arises the issue related to the distribution of the credit as what should be the turnover for the distribution, relevant period etc. Being an auditor, we can check the following issue:

(a) Whether CENVAT Credit distributed against the documents as mentioned under Rule 9 of the CENVAT Credit Rules, 2004?
(b) Whether credit in respect of unit which is exclusively providing only exempted services is taken or not?
(c) Whether credit attributable to a specific unit is distributed to that unit only?
(d) Whether turnover for the distribution has been determined in accordance with the Rules?

Apart from this from the prospect of Point No 28, we can check whether CENVAT Credit taken by the concerned branch received by an input service distributor is in compliance to the CENVAT Credit Rules, 2004.

Points 24: CENVAT credit of various services is not allowed to a service provider which is not input services by virtue of exclusion clauses in the definition of input services under Section 2(l).Being auditors we can ask for the list of major input services on which CENVAT Credit is availed by the concerned branch/head office? Following are illustrative services which are not allowed:

(i) Employee Insurance
(ii) Outdoor Catering
(iii) Rent a cab
(iv) Construction services

Point 25: As per Rule 6(3B) of CENVAT Credit Rules, 2004, an assessee in banking sector has to reverse 50% of the CENVAT Credit taken on monthly basis. Being an auditor, we can check whether, concerned branch is reversing the CENVAT Credit in compliance to the said Rule. If CENVAT Credit is not reversed in compliance to the said Rule, it shall be treated as CENVAT wrongly taken and the same will be recovered under Rule 14 of the CENVAT Credit Rules, 2004 along with the interest under Section 75 of the Finance Act, 1994.

Point No.26: As per First proviso to Rule 4(7) of the CENVAT Credit Rule, 2004, an assessee can take the CENVAT of service tax paid on reverse charge on or after the day on which payment is made to the service provider as well as service tax payment to the government. In other words, CENVAT Credit of service tax paid under reverse charge is available only after the payment of service tax as well as payment to the service provider.

Being an auditor, we can check whether CENVAT Credit is taken in compliance to the proviso to Rule 4(7). Briefly invoices on which credit sought to be claimed should bear name and address of Service Recipient Branch, Date of invoice, Value of Service Tax charged separately, Name and Registration number of service provider. In case the concerned branch/head office has taken the CENVAT Credit prior to the payment of service tax or payment to service provider, in that case it shall be treated as wrong availment of CENVAT Credit and shall be recovered under Rule 14 along with the interest under Section 75 of the Finance Act, 1994.

Point No.29: The Place of Provision of Service Rules, 2012 specifies the manner to determine the tax jurisdiction for a service. As per Rule 66B, a service is taxable only when it is provided or deemed to be provided in the taxable territory. Thus the taxability shall be determined based on the place of provision. These rules help us in determining the place of provision of a service specifically in case of cross border transactions.

Rule 9 of the Place of Provision of Service Rules, 2012 provides that a service provided by the bank to its account holder shall be deemed to be provided at the place where such bank is located. For e.g. An account in the concerned branch is located in UK, in that case any service provided by the bank to such account holder shall be taxable at the location of service provider i.e. concerned branch which may be located in the taxable territory.

Being an auditor, we can check whether service tax is charged and paid by the concerned branch on services provided to an account holder located in the non taxable territory.

Clarification regarding Annexure to Questionnaire:

Annexure A

This annexure intends to reconcile and highlight any discrepancy in payment of service tax during the period under audit. Serial number wise clarification has been provided below:

A. Total Taxable Turnover- This will include all taxable components of turnover on which service tax is paid by the concerned branch during the period under Audit.

B. Total Non Taxable Turnover- This will include turnover of all the Non Operating, Exempted and Non Taxable (Negative list) activities.

C. Grand Total-It should match with the income appearing in the profit and loss account of the concerned branch/head office.

D. Advances as on 31st March 20XX- As per Point of Taxation Rules, 2011, Service Tax is payable at earlier of advances received or date of invoice. We need to check the amount of advances appearing in the balance sheet with the amount mentioned in the annexure.

F. Service Tax is calculated at the rate prescribed on different taxable components. For e.g. There are two different components (i) bank charges (ii) conversion of foreign currency -. In this line item, we need to calculate total tax by applying respective rate or valuation method i.e. on bank charges @ 12% and foreign currency conversion in manner prescribed under Rule 6(7B).

J. This line item refers the payment of service tax by utilizing CENVAT credit available with the branch and payment made in cash.

Annexure D

CENVAT register is required to check whether the payment against invoices on which CENVAT Credit is taken by the concerned branch is made within 90 days from the *Date of Invoice*.

Appendix I

Service Tax Rules, 1994

(As amended upto date)

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);

(*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*);

(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" shall have 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*.

(*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:

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) *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 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 to the said company, the recipient of such service*;]

(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*]*; 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*;]

[(*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;]

[(*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*;]

(*g*) *"supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control*.]

(2) All words and expressions used but not defined in these rules but defined in the [Central Excises Act, 1944] (1 of 1944) [and the rules made thereunder 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 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].]

[* * *]

[(1A) For the purposes of sub-rule (1), the Central Board of Excise and Customs may, by an order specify the documents which are to be submitted by the assessee alongwith the application within such period, as may be specified in the said order.]

[(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.

(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 furnish any additional information or detail, such change or information or details shall be intimated, in writing, by the assessee, to 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 there under, and thereupon cancel the registration certificate.]

[4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan.—(1) Every person providing taxable service shall [, not later than [*thirty days*] from the date of [completion of] such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier] issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized 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:

[*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 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, the period within which the invoice, bill or challan, as the case may be, is to be issued, shall be forty-five days*:]

[* * *]

[*Provided 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 provider of service and address of the recipient of service 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 authorized 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.]

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) * * *]

Explanation.—For the purposes of this rule, "registered premises" includes all premises or offices from where an assessee is providing taxable services.]

[5A. Access to a registered premises.—(1) An officer authorized 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.]

[*5B. Date for determination of rate*.—* * *]

[6. Payment of service tax.— [(1) The service tax shall be paid to the credit of the Central Government,—

(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 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 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 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 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) The assessee shall deposit the service tax liable to be paid by him with the bank designated by the Central Board of Excise and Customs for this purpose in Form TR-6 or in any other manner prescribed by the Central Board of Excise and Customs:

[Provided that where an assessee 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, he shall deposit the service tax liable to be paid by him electronically, through internet banking.]

[(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 realisation 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 a contract], the assessee may take the credit of such excess service tax paid by him, if the assessee.—

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

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

[(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 (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 service 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-ST, dated the 20th 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 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 TR-6" means a memorandum or challan referred to in rule 92 of the Treasury Rules of the Central Government.

[(6A) Where an amount of service tax payable has been self-assessed under sub-section (1) of section 70 of the Act, but not paid, either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed under section 87 of the Act.]

(7) The person liable for paying the service tax in relation to the services [*of booking of tickets for travel by air*] provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of [0.6%] of the basic fare 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, 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.

[(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;

[(*ii*) *in all other cases, 3 per cent. of the premium charged from policy holder in the first year and 1.5 per cent. 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) [*0.12 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*

(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 0.12 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*]*:*

Provided that 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.]

[* * *]

[[(*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*:]

Table

Sl. No.	Rate	Condition
(1)	(2)	(3)
1.	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 the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2.	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 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.

Explanation.—For the purpose of this sub-rule—

(i) "distributor or selling agent" shall have 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, Part-II, Section 3, Sub-section (*i*) *vide* number GSR 278(E), dated 1st April, 2010 and shall include distributor or selling agent authorised by the lottery organising State.

(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 GSR 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 GSR 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 GSR 278(E), dated 1st April, 2010.]

[* * *]

[*6A. Export of services.—(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 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*.

(*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, alongwith a copy of the Form TR-6, 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 25th day of October, 2012 shall cover the period between 1st April to 30th June, 2012 only*:]

[*Provided further that the Form ST-3 for the period between the 1st day of July 2012 to the 30th day of September 2012, shall be submitted by the 25th day of March, 2013*;]

[(3) Every assessee shall submit the half-yearly return electronically.]

[(4) The Central Board of Excise and Customs may, by an order extend the period referred to in sub-rule (2) by such period as 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 TR-6 in triplicate, failing which the interest and penal consequences as provided in the Act shall follow.]

[7B. Revision of Return.—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.

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.—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—

(*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:

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.]

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.]

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, in so far as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large taxpayer.

Appendix II

CENVAT Credit Rules, 2004

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] of the First Schedule to the Excise Tariff Act;

[(*ia*) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or]

(*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;

(*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; 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);

(*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 [goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE, dated the 1st March, 2011 or under entries at serial numbers 67 and 128

of Notification No. 12/2012-CE, 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 which is exported in terms of rule 6A of the Service Tax Rules, 1994.]

(*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,—

(*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;

[(*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 for captive use; or

(*iv*) all goods used for providing any output service;

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 when used as parts or components in the manufacture of a final product*;

(*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 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*;]

[(*l*) *"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; but excludes [* * *],—

[(*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 cycle*]*, 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, 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;

(*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 taxpayer" 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;

(*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-CE, 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-CE,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;]

[(*viia*) 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; and]

[(*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)]:]

[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 GSR 265(E), dated, the 31st March, 2003.]

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 GSR 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.

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-CE, 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-CE, dated the 8th July, 1999 [GSR 508(E), dated 8th July, 1999];

(*ii*) No. 33/99-CE, dated the 8th July, 1999 [GSR 509(E), dated 8th July, 1999];

(*iii*) No. 39/2001-CE, dated the 31st July, 2001 [GSR 565(E), dated the 31st July, 2001];

(*iv*) No. 56/2002-CE, dated the 14th November, 2002 [GSR 764(E), dated the 14th November, 2002];

(*v*) No. 57/2002-CE, dated 14th November, 2002 [GSR. 765(E), dated the 14th November, 2002];

(*vi*) No. 56/2003-CE, dated the 25th June, 2003 [GSR 513(E), dated the 25th June, 2003]; and

(*vii*) No. 71/2003-CE, dated the 9th September, 2003 [GSR 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) 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 specified in sub-rule (1), except the National Calamity Contingent duty in item (*v*) thereof, shall not

be utilized for payment of the 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 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.]

[*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:]

[* * *]

[(*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*.]

[(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.]

[(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 shall be reversed.]

(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, [GSR 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, [GSR 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) 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 [GSR 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 [GSR 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 levaible 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); and

[(*via*) the Secondary and Higher Education Cess on taxable services leviable u/s 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 meter;

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:

[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*.]

(2) (*a*) The CENVAT credit in respect of capital goods received in a factory 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,] 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 immediately on receipt 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.—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 upto 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*) The CENVAT credit shall be allowed even if any inputs or capital

goods as such or after being partially processed 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 provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

[(*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 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 case of an input service where the service tax is paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such input service shall be allowed on or after the 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 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 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 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:

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.

Explanation I.—The amount mentioned in this sub-rule, 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 sub-rule, 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*.—(*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 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:

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

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*]*;*

(*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-rule (*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-CE, 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.]

[*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*.]

6. [Obligation of a manufacturer or producer of final products and a provider of [*output*] *service*].—(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.]

[(2) Where 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 p 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 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 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 up to 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 up to 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, 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 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.

[* * *]

[(3B) 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; or*

(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-rule* (*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 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.

[* * *]

(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 GSR 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-CE, dated the 17th March, 2012, Number GSR 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,*

(*8*) *For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when*:—

(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.*]

[*7. Manner of distribution of credit by input service distributor.—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 in a unit 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 in a unit shall be distributed only to that unit; and*

[(d) *credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same 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.*—(a) *The relevant period shall be the month previous to the month during which the CENVAT credit is distributed*.

(b) *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*.

(c) *In case of an assessee who does not have any total turnover in the said period, the input service distributor shall distribute any credit only after the end of such relevant period wherein the total turnover of its units is available*.]

[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.]

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 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 for clearance of—

(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 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 misstatement 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 there under 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;]

(*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, 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 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) *Omitted by the CENVAT Credit* (*Second Amendment*) *Rules, 2007*, *w.e.f. 1-3-2007*.]

(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.

(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, 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:

[Provided that the first stage dealer or second stage dealer, 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.]

[9A. Information relating to principal inputs.—(1) 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:

[Provided further that where a manufacturer of final products has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file such declaration electronically.]

(2) If a manufacturer of final products intends to make any alteration in the informa-tion 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:

[Provided that where a manufacturer of final products has paid total duty of rupees ten lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file the said monthly return electronically.]

(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).

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-CE, dated the 8th July, 1999* [*GSR 508*(*E*), *dated the 8th July, 1999*];

(ii) *No. 33/99-CE, dated the 8th July, 1999* [*GSR 509*(*E*), *dated the 8th July, 1999*];

(iii) *No. 39/2001-CE, dated the 31st July, 2001* [*GSR 565* (*E*), *dated the 31st July, 2001*];

(iv) *No. 56/2002-CE, dated the 14th November, 2002* [*GSR 764*(*E*), *dated the 14th November, 2002*];

(v) *No. 57/2002-CE, dated the 14th November, 2002* [*GSR. 765*(*E*), *dated the 14th November, 2002*];

(vi) *No. 56/2003-CE, dated the 25th June, 2003* [*GSR 513*(*E*), *dated the 25th June, 2003*];

(vii) *No. 71/2003-CE, dated the 9th September, 2003* [*GSR 717*(*E*), *dated the 9th September, 2003*];

(viii) *No. 20/2007-CE, dated the 25th April, 2007* [*GSR 307*(*E*), *dated the 25th April, 2007*]; *and*

(ix) *No. 1/2010-CE, dated the 6th February, 2010* [*GSR 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 out-put 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-CE, 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]] 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 taxpayer.—Notwithstanding anything contained in these rules, the following procedure shall apply to a large taxpayer,—

(1) A large taxpayer 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 Taxpayer 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 taxpayer, 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 taxpayer fails to pay any amount due in terms of the first and second proviso, 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-CE, dated the 8th July, 1999 [GSR 508(E), dated 8th July, 1999];

(*ii*) No. 33/99-CE, dated the 8th July, 1999 [GSR 509(E), dated 8th July, 1999];

(*iii*) No. 39/2001-CE, dated the 31st July, 2001 [GSR 565(E), dated 31st July, 2001];

(*iv*) No. 56/2002-CE, dated the 14th November, 2002 [GSR 764(E), dated the 14th November, 2002];

(*v*) No. 57/2002-CE, dated 14th November, 2002 [GSR 765(E), dated the 14th November, 2002];

(*vi*) No. 56/2003-CE, dated the 25th June, 2003 [GSR 513(E), dated the 25th June, 2003];

(*vii*) No. 71/2003-CE, dated the 9th September, 2003 [GSR 717(E), dated the 9th September, 2003]; [* * *]

[(*viii*) No. 20/2007-CE, 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* [*GSR 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 an 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 taxpayer may transfer, CENVAT credit available with one of his registered manufacturing premises 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-CE, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];

(*ii*) No. 33/99-CE, dated the 8th July, 1999 [GSR 509(E), dated 8th July, 1999];

(*iii*) No. 39/2001-CE, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001];

(*iv*) No. 56/2002-CE, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(*v*) No. 57/2002-CE, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];

(*vi*) No. 56/2003-CE, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003]; [* * *]

(*vii*) No. 71/2003-CE, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003];

[(*viii*) No. 20/2007-CE, dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007];] [*and*]

[(ix) *No. 1/2010-CE, dated the 6th February, 2010* [*GSR 62*(*E*), *dated the 6th February, 2010*].

(5) A large taxpayer 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 Taxpayer Unit, shall be deemed to have been issued by Central Excise officers of the said Unit.

(7) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large taxpayer.]

[*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 a 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 an officer authorized by the Board.]

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.—Where the CENVAT credit has been taken [*and*] utilized wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service and the provisions of sections 11A and [*11AA*] of the Excise Act or sections 73 and 75 of the Finance Act, shall apply mutatis mutandis for effecting such recoveries.

[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 not exceeding the duty or service tax on such goods or services, as the case may be, or two thousand rupees, whichever is greater.

(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 misstatement 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 section 11AC 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 misstatement 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 th he 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 p 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.]

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.]

Appendix III

Place of Provision of Services Rules, 2012

Notification No. 28/2012-ST [*F.No. 334/1/2012-TRU*], *dated 20-6-2012*

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 3rd March, 2005 published in the Gazette of India Extraordinary, Part II, Section 3, Sub-Section (*i*) *vide* number G.S.R. 151(E), dated the 3rd March, 2005 and the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 11/2006-ST, dated the 19th 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 19th 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:—

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 1st 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) between two or more persons, but does not include a person who provides the main service on his account.;

(*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.—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:

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.

(*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.

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.

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.

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 means of transport, upto a period of one month.

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.

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.

Appendix IV

Point of Taxation Rules, 2011

Notification No. 18/2011-ST, dated 1-3-2011, w.e.f. 1-4-2011

In exercise of the powers conferred under clause (a) and clause (hhh) of sub- section (2) of section 94 of the Finance Act, 1994, the Central Government hereby makes 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);

[(b) * * *]

[(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* [*agreed*] *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;

[(f) * * *]

[*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.

[*Explanation*.—* * *]

[*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*.]

[6. * * *]

[*7. Determination of point of taxation in case of specified services or persons*.— *Notwithstanding anything contained in these rules, 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 six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist:

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*.]

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.

Appendix V

[TO BE 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. 30/2012-Service Tax

New Delhi, the 20th 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 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:—

I. The taxable services,—

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

(ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

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

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

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

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

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

(iv) provided or agreed to be provided by,-

(A) an arbitral tribunal, or

(B) an individual advocate or a firm of advocates by way of support services, or

(C) Government or local authority by way of support services excluding,-

(1) renting of immovable property, and

(2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994,

to any business entity located in the taxable territory;

(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 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

S.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3	in respect of services provided or agreed to be provided by way of sponsorship	Nil	100%
4	in respect of services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
6	in respect of services provided or agreed to be provided by Government or local authority by way of support services excluding,- (1) renting of immovable property, and (2) services specified in sub-	Nil	100%

	clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994		
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business (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	Nil 60%	100 % 40%
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%
10	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

Explanation-I. The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the

option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012.

[F.No. 334/1/2012- TRU]

(Raj Kumar Digvijay)
Under Secretary to the Government of India

Compliances of Service Tax in Banking Industries

[TO BE 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. 45/2012 - Service Tax

New Delhi, the 7th 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 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:-

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 20th June, 2012, vide number G.S.R. 472 (E), dated the 20th June, 2012 and the same has not been amended so far.*