

# **Service Tax: A Practitioner's Perspective**



Committee for Capacity Building of CA Firms and Small & Medium  
Practitioners (CCBCAF & SMP)

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

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## Foreword

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Over a period of time, the Indirect Taxes have become a significant source of revenue for the government. The system relating to indirect taxation has undergone major transformation since 1991 with the country embracing liberalisation and globalisation as the themes for growth. This journey continued with introduction of service tax at central level, value added tax at state level, and is still continuing by way of various amendments made in the indirect tax laws.

The Service Tax law, relatively a new law, has witnessed frequent changes. The scope of tax that started with merely three services in the year 1994 has expanded gradually but steadily. The budget 2012-13 brought paradigm shift in the way services are taxed in our country by introduction of the concept of Negative List of services.

We are now at the threshold of next major step in reform process; moving to Goods and Services Tax replacing primarily, central excise duties and service tax, at Central level and state value added tax and few other taxes at State level.

Many chartered accountants are practising in service tax and are doing exceedingly well. I am happy that the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP) of our Institute has brought out the book on "Service Tax: A Practitioner's perspective". I appreciate the efforts put in preparing the book and compliment the Chairman, CCBCAF & SMP, ICAI, & his team for publishing the aforesaid book.

I wish that the readers find this book extremely useful.

**CA. Jaydeep Narendra Shah**

President

The Institute of Chartered Accountants of India



## Preface

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Service tax was first introduced in India by insertion of Chapter V of the Finance Act, 1994 and is hereinafter referred to as "The Act". The Act came into force from 1.7.1994 by introducing three services to start with. Thereafter, year after year the said Chapter of the Finance Act, 1994 is being amended to introduce new services under the taxable category.

The Finance Act, 2012 has adopted an altogether different approach. According to a new approach, any activity undertaken by a person for another for consideration will fall within the ambit of service tax. However, those services which have been specified in the negative list of services as well as those services which are exempted by virtue of an exemption notification will not attract any service tax. Hence, by taking this single step, the scope of services which will attract service tax has increased manifold. Further, many other changes have either been effected or are proposed to be effected by the Finance Act, 2012 in respect of service tax.

Members of our Institute play a significant role in enriching the knowledgebase in the domain of Service Tax. Due to increasing changes and complexities taking place in the field of service tax and expected implementation of the Goods and Service Tax in the near future, I am glad to know that the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP) of our Institute has brought out the book on "**Service Tax: A Practitioner's perspective**".

I place on record my deep sense of gratitude to CA Gajendra Maheshwari for preparing the basic draft of this publication thereby sharing his relevant experience and expertise amongst members. I also appreciate the contribution made by CA (Dr.) Sanjiv Agarwal. I appreciate the efforts put in by the members of CCBCAF & SMP, Working Group on Research & Publications & Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP and other officials of the Secretariat who have provided necessary support for publishing the aforesaid book.

**With warm regards**

Chairman  
Committee for Capacity Building of CA Firms and Small & Medium  
Practitioners (CCBCAF&SMP), ICAI



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# Chapter 1

## Introduction

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The flourishing economy opens up a whole new paradigm of opportunities and avenues for professionals to perform prosper and prove their vigor. Chartered Accountants as professionals have time and again proved their acumen, be it in practice or employment. It does not need to be argued that the knowledge of a Chartered Accountant is second to none. But in the ever-changing scenario, constant up-gradation and a thorough understanding of the latest statutory provisions/ mandatory requirements having force of law are an essential factor/ element/ aspect to keep the flag of the fraternity flying high.

Amongst the many opportunities that stand in the way of members, the field of indirect taxes needs to be particularly mentioned because it is the road less travelled and with it rests the enormous potential that offers the willing a whole new area of opportunities. In the vast field of indirect taxes, many statutes are covered but it is the shift of our economy from manufacturing sector to the rapidly expanding service sector that particularly draws our attention to Service tax, which is an exciting phenomenon amongst the indirect taxes. The Service tax net is rapidly expanding and it promises a robust future. This book here provides an insight into the major provisions of the Finance Act 1994, updated with changes upto 10<sup>th</sup> August 2012 and a wholesome set of functional areas that are available for Chartered Accountants to explore.

### **Why Chartered Accountants?**

A Chartered Accountant is a versatile professional who has an unparalleled practical exposure and vast knowledge thanks to their tough examination and extensive training. They certainly count among the top 1-2% of the population in terms of education and knowledge. The area of indirect tax practice is not much different from the practice in direct taxes, which is much more familiar to this community. However, it should be acknowledged that unlike Excise/ Custom/ VAT dealing with goods, services being intangible in nature have a unique place in indirect taxes and their accounting is very important and significant exercise. Leaving many other factors aside and talking only from the accounting perspective, there is no other professional who can serve the purposes better than a Chartered Accountant. The

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remuneration for the practitioner in this area is generally much higher due to the lack of specialists as well as the high stakes involved especially in advisory and litigation.

## Chapter 2

# Areas of Opportunity for Chartered Accountants

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*The areas where Chartered Accountants in practice/employment can provide their services are as under:-*

1. **Providing tax planning in government/commercial projects having substantial investment:** Indirect taxes could form up to 27% of value, (Excise/ Service tax 12% +VAT 13% + Misc taxes 2%) of a transaction which could be substantially reduced by structuring the transaction in such a way that the pricing is competitive. Chartered Accountants with their knowledge guide their clients in structuring transactions in a way that the tax burden is legitimately reduced.
2. **Registration:** Registration is one service that could be of much help to the client and it does not take too many days. Registration is also important at the time of addition/ deletion of branches. Chartered Accountants can guide the clients in seeking registration on centralized/ decentralized basis depending upon the nature of services provided by them.
3. **Disclosures to department:** Disclosures made to the department such as books of accounts maintained, procedures followed by the taxpayer, copies of documents including intimation about important contracts and tax treatment with respect to the same play a significant role which most of the taxpayers tend to overlook, Chartered Accountants can ensure proper disclosures of important events that have occurred during the provision of output services which could save taxpayers from being assessed to tax for extended period and imposition of penalties.
4. **Procedural Aspect:** As the tax payer may not be aware of the relevant law, Chartered Accountants can explore the opportunity of providing the start up hand holding exercise, wherein for the initial few months of operations, Chartered Accountants could assist/ guide the taxpayers in maintaining the accounts, raising the bills, drafting quotation, filing of returns, payment of Service tax/ excise duty, assessing whether any value based abatements are available, calculation of interest standard operating procedures to be implemented, controls to be instituted etc.

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5. **Monthly/ Quarterly payment of Tax/ duties:** Taxpayers having multi dimensional activities, requiring to comply with different laws, would welcome outsourcing of their tax computation and remittance activity to Chartered Accountants, so that they are not burdened with tax compliance work, without effecting their routine work and the same is cost effective.
6. **Return Verification/ Filing of returns:** Taxpayers are often not abreast with latest amendments, notifications etc, in the Service tax so as to fill a correct return. Chartered Accountants could explore an opportunity of filing/ reviewing the returns, ensuring that the returns, depicting true and correct information, are filed within the due date so as to avoid future litigation.
7. **Service tax Review and Quarterly Audit:** Chartered Accountants could conduct a review audit, to examine various tax positions adopted by the clients. Further, a nutshell review of Service tax transactions along with internal audit or as a separate service could create value addition to the clients.
8. **Review before Departmental Audit:** The Chartered Accountant can take up reviews to ascertain the grey areas and possible risk associated with them to provide taxpayers an opportunity to take immediate action and rectify the grey areas so as to mitigate the risk of hefty tax demand and along with interest and penalty. Such review provides a feeling of comfort that major issues/ possible errors have been examined. For example: In case Service tax is payable but not paid, the Chartered Accountant conducts a review and shall guide the client to discharge his Service tax liability along with interest so as to avoid penalty exposure. Alternatively, in a few cases, the possibility of approaching settlement commission could also be explored.
9. **Assistance during Departmental IAP or CAG Audit:** These audits are dreaded by tax-payers who normally have a very limited knowledge of the provisions and rules. Therefore a knowledgeable professional Chartered Accountant is needed who can interact with the department during the audit. This would restrict departmental officers from confronting the clients with unwarranted issues, which could create problems to the taxpayers at the higher forums during litigation.
10. **Opinions/ Clarifications:** Margins in today's competitive environment are very thin and hence it is vital for the assessee to have a clear understanding regarding applicability of tax because over/under charging of the tax could result in a significant business risk. Where the Service tax

## Area of Opportunity for Chartered Accountants

consultancy is given by a Chartered Accountant, the client would be able to structure optimally his availment of credits, payment towards liability of Service tax/ Excise duty etc, thus ensuring smooth cash flow for other aspects of his business.

11. **Transaction structuring:** Chartered Accountants would play a vital role in area of transaction structuring. The impact of which would result in certainty in business by reduction in litigation exposure as well as high margin and competitiveness.

12. **Effect of budget/recent changes on activity:** Updating and keeping abreast of the budget changes, evaluating its implications on the existing business and alteration of business practice in case of negative impact due to the amendments is an important exercise and a Chartered Accountant can guide the client in this regard.

13. **Refunds of Service Tax:** A Chartered Accountant can assist the client in compiling information, documentation and collating of data for the purpose of applying for refund under service tax law. In this regard, assistance may be given in filing and submission of refund claims with Service tax Authorities, along with following up on the same to ensure that refunds are being remitted to the clients in timely manner.

14. **Departmental letter reply:** Almost every departmental audit brings forth certain objections. A reasoned reply provided to the audits by professional with extracts of the law/ circulars or Tribunal Judgments may eliminate 90% of the points, which in turn would result in low probability of litigation.

15. **Show Cause Notice Reply:** This area offers immense learning potential as well as apposite remuneration to the professionals. All the important evidences and defenses and factual issues should be put forward at this point before the tax authorities. However, it shall be noted that at the very beginning the professional engaged should let the client know about the possible implications in writing / mail so that there is no scope for disappointment and the esteem of the profession is maintained.

16. **Representation before adjudicating authority:** This stage normally follows the SCN reply as it is possible to get all the necessary details. Here, the Chartered Accountants can play a vital role in making representations to the appropriate authorities in relation to the issues identified in the SCN.

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17. **Reply / Representation at appellate forums:** In the course of the appellate proceedings Chartered Accountants can represent the interests of the client up to the tribunal stage.

18. **Assistance to Advocate at High Court/ Supreme Court level:** Though Chartered Accountants cannot appear at the High/ Supreme Court level for representing a client, they can assist Advocates on accounting and other related matters.

19. **Other Areas:** These could be in training/ teaching, writing articles, assisting in drafting the notification, authoring a book etc. Training could involve rendering training sessions to clients, speaking in seminars etc. However, before making his/her selection, the professional should remember Service tax law is quite complex, as compared to central excise which is a well settled law; he/she should first of all have exposure to this area plus proper training for desired results.

The formula of success for the practitioner is that he should provide quality, at the appropriate price with grace and dedication.

*Note: There are a few common errors in relation to service tax matters. The list of such common errors is given in **Appendix-1**. The purpose of this list is to ensure that common mistakes are avoided to the extent possible. Some of the common practitioner's aids for practice in this area are given in **Appendix 3**.*

## Chapter 3

# An Overview of Service Tax Law

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Services are one of the major contributors to the development of economy, as per the Economic Survey 2011-12. The contribution of the services sector to the Indian Economy has been manifold: a 64.4% share in Gross Domestic Product (GDP), growing 7 to 8% annually, contributing about 25% in generation of employment.

Tax on services was first introduced in the year 1994, through the insertion of Chapter V in the Finance Act, 1994, and levy was confined to three services (viz Telephones, Stock Brokers & General Insurance). Since then, the Act has been amended every year to bring in more services into the tax net and before Finance Act, 2012, 119 services were defined as taxable services.

The Finance Act, 2012 had introduced the concept of negative list which became effective from July 1, 2012. It means, if any activity meets the characteristics of a 'service' as defined in the Act, it is taxable unless specified in the negative list or otherwise exempted by a notification.

### Governing Provisions

The provisions pertaining to Service tax are given in Chapter V and VA of the Finance Act, 1994. The provisions of the Finance Act, 1994 are amended from time to time to introduce amendments in the Service tax laws. There is no separate act (i.e. like Income Tax Act, 1961 or Central Excise Act, 1944) governing the levy of Service tax.

The levy of Service tax is also dependent on the place where the service is provided, i.e. the taxability arises only if services are provided in the taxable territory. The government has laid down the Place of Provision of Service Rules, 2012 for determining the place where the services are provided (i.e. within or outside the taxable territory).

Where the services are provided outside the taxable territory, they are not taxable and at the same time could qualify as 'export', and in such an event a service provider could claim refund of the unutilized input tax credits.

If the services are taxable, the liability to deposit tax could be on the service provider or the service recipient (e.g., in case where provider of service is located outside India or services provided by Goods Transport Agencies in

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certain other cases). The Point of Taxation Rules, 2011 lay down the provisions as to when the liability to deposit tax with the government arises under different situations.

The value of taxable services (i.e. the value on which tax is required to be paid) is governed by the provisions contained in the Finance Act, 1994 and the Service tax (Determination of Value) Rules, 2006, that is discussed in detail in Chapter 11.

The provisions related to input tax credit are primarily governed by the CENVAT Credit Rules, 2004. These rules are discussed in Chapter 14 of the book.

### **Governing Authority**

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

## Chapter 4

# Levy of Service Tax

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### Charge of Tax

Section 66B of the Finance Act, 1994 that is operative from 1<sup>st</sup> July, 2012, provides for charge of Service tax.

Section 66B of the Finance Act is explained as under:

“66B. There shall be levied a tax (hereinafter referred to as the Service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.”

Thus, Section 66B of Finance Act provides that the Service tax would be chargeable on the value of all services provided or agreed to be provided by one person to another, other than those services specified in the negative list which are provided within the taxable territory.

Analysis of the above provision along with other relevant provisions of the law, the new scheme of the Service tax law can be summarized as under:

**Under the new regime Service tax is payable on:**

- ‘services’
- including ‘declared services’
- ‘provided or agreed to be provided’\*
- in ‘taxable territory’
- by one person to another

**except on:**

- activities excluded from the definition of ‘service’;
- services specified in the ‘negative list; and
- exempt services

\*determined in accordance with Place of Provision of Service Rules, 2012

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Each of these concepts is discussed in detail in the subsequent Chapters along with other key substantial and procedural provisions.

### **Rate of Tax**

The general rate of Service tax is 12%. In addition, Education Cess (EC) of 2% and Secondary and Higher Education Cess (SHEC) of 1% on the amount of Service tax are also required to be paid.

In summary, the present effective rate of Service tax is 12.36% (w.e.f. 1<sup>st</sup> April, 2012) on the value of services.

## Chapter 5

# Meaning of Service and Declared Service

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### What is Service?

Before Finance Act 2012 i.e. up to 30.06.2012 the term "service" was not defined in the Finance Act, 1994. Service has been defined differently under various laws like **Income Tax Act, 1961, Monopolies and Restrictive Trade Practices Act, 1969, Consumer Protection Act, 1986, Foreign Exchange Management Act, 1999, etc.**

#### With effect from 01.07.2012

As per Sec 65B(44) of the Finance Act, Service has been defined as-

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

- (a) An activity which constitutes merely: -
  - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner ;or
  - (ii) Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the constitution; or
  - (iii) A transaction in money or actionable claim;
- (b) A provision of service by an employee to the employer in the course of or in relation to his employment.
- (c) Fees taken in any Court or Tribunal established under any law for the time being in force
- **Explanation 1- For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to:**
  - (A) The functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayat, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

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

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

- **Explanation 2** provides that for the purpose of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged.
- **Explanation 3-** For the purpose of this chapter-
  - (a) An unincorporated association or body of persons as the case may be, and a member thereof shall be treated as distinct persons
  - (b) An establishment of a person in the taxable territory and any of his other establishment in a non taxable territory shall be treated as establishment of distinct persons
- **Explanation 4-** A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

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

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

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

## Meaning of Service and Declared Service

The definition more or less implies to cover all the transactions, which are not subject to any tax so far viz Central Excise, VAT, Stamp Duty etc. and includes a declared service.

### **Declared Services:**

The definition of term "Service" as given in Section 65B(44) of Finance Act, 1994 includes declared services.

According to Section 65B(22), declared service means any activity carried out by a person for another person for consideration and declared as such under Section 66E of the Act.

These services have been specifically listed to ensure uniformity in taxation of services across the country and to remove ambiguity.

Section 66E provides that the following services shall be treated as declared services:-

- 1) Renting of immovable property,
- 2) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer wholly or partly except where the entire consideration is received after issuance of completion certificate (CC) by the competent authority.
  - *It is explained that completion certificate from chartered engineer, architect or licensed surveyor would be treated as CC for the purpose of service tax only when there is exemption from obtaining CC from the Government or any authorised authority in certain areas or certain types of building.*
- 3) Temporary transfer or permitting the use or enjoyment of any intellectual property right
  - *The IPRs not registered in India are also liable to service tax. However, it will become taxable only if the place of provision of service of temporary transfer of intellectual property right is in taxable territory in light of the Place of Provision of Services Rules.*
- 4) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software

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- 5) Agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act.
- 6) Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods.
- 7) Activities in relation to delivery of goods on hire purchase or any system of payment by installments
- 8) Service portion in execution of a works contract
- 9) Service portion in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

## Chapter 6

# Negative List and Exempted Services

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### Negative List

Services covered under the Negative List are not taxable. In other words there is no Service tax on provision of these services. These are services which have been specifically excluded from the gamut of Service tax in the statute itself.

The negative list of services has been specified in Section 66D of the Act. As per Section 66D of the Act, the negative list comprises of the following services:

- (a) Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere:
  - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
  - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  - (iii) transport of goods or passengers; or
  - (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities.
- (b) Services by the Reserve Bank of India.
- (c) Services by a foreign diplomatic mission located in India.
- (d) Services relating to agriculture or agricultural produce by way of -
  - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
  - (ii) supply of farm labour;
  - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do

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- not alter essential characteristics of agricultural produce but make it only marketable for the primary market;
  - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
  - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
  - (vi) agricultural extension services;
  - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.
- (e) Trading of goods.
  - (f) Any process amounting to manufacture or production of goods.
  - (g) Selling of space or time slots for advertisements other than advertisements broadcast by radio or television.
  - (h) Service by way of access to a road or a bridge on payment of toll charges.
  - (i) Betting, gambling or lottery.
  - (j) Admission to entertainment events or access to amusement facilities.
  - (k) Transmission or distribution of electricity by an electricity transmission or distribution utility.
  - (l) Services by way of–
    - (i) pre-school education and education up to higher secondary school or equivalent;
    - (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
    - (iii) education as a part of an approved vocational education course.
  - (m) Services by way of renting of residential dwelling for use as residence;
  - (n) Services by way of –
    - (i) extending deposits, loans or advances insofar as the consideration is represented by way of interest or discount;

## Negative List and Exempted Services

- (ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;
- (o) Service of transportation of passengers, with or without accompanied belongings, by–
  - (i) a stage carriage;
  - (ii) railways in a class other than –
    - (A) first class; or
    - (B) an air conditioned coach;
  - (iii) metro, monorail or tramway;
  - (iv) inland waterways;
  - (v) public transport, other than predominantly for tourism purpose in a vessel between places located in India; and
  - (vi) metered cabs, radio taxis or auto rickshaws;
- (p) Services by way of transportation of goods –
  - (i) by road except the services of –
    - (A) a goods transportation agency; or
    - (B) a courier agency;
  - (ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or
  - (iii) by inland waterways;
- (q) Funeral, burial, crematorium or mortuary services including transportation of the deceased.

### **Exempted Services**

Exempted services are those services which are otherwise taxable but have been specifically exempt under notification issued under Section 93(1) of the Act. The Notification No. 25/2012 dated 20<sup>th</sup> June, 2012 and subsequent notification in this regard exempts the following taxable services from the whole of the Service tax leviable thereon under Section 66B of the said Act:

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

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2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under Section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of-
  - (a) renting of precincts of a religious place meant for general public; or
  - (b) conduct of any religious ceremony;
6. Services provided by-
  - (a) an arbitral tribunal to -
    - (i) any person other than a business entity; or
    - (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;
  - (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-
    - (i) an advocate or partnership firm of advocates providing legal services ;
    - (ii) any person other than a business entity; or
    - (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or
  - (c) a person represented on an arbitral tribunal to an arbitral tribunal;
7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;
9. Services provided to or by an educational institution in respect of education exempted from Service tax, by way of,-

## Negative List and Exempted Services

- (a) auxiliary educational services; or
  - (b) renting of immovable property;
10. Services provided to a recognised sports body by-
- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
  - (b) another recognised sports body;
11. Services by way of sponsorship of sporting events organised,-
- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
  - (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
  - (c) by Central Civil Services Cultural and Sports Board;
  - (d) as part of national games, by Indian Olympic Association; or
  - (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;
12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
  - (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
  - (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
  - (d) canal, dam or other irrigation works;

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- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
  - (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of Section 65 B of the said Act;
13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-
- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
  - (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
  - (c) a building owned by an entity registered under Section 12 AA of the Income tax Act, 1961(43 of 1961)and meant predominantly for religious use by general public;
  - (d) a pollution control or effluent treatment plant, except located as a part of a factory; or
  - (e) a structure meant for funeral, burial or cremation of deceased;
14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-
- (a) an airport, port or railways, including monorail or metro;
  - (b) a single residential unit otherwise than as a part of a residential complex;
  - (c) low- cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
  - (d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
  - (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

## Negative List and Exempted Services

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15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of Section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;
16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;
17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;
18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;
19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a license to serve alcoholic beverages;
20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -
  - (a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
  - (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
  - (c) defense or military equipments;
  - (d) postal mail or mail bags;
  - (e) household effects;
  - (f) newspaper or magazines registered with the Registrar of Newspapers;
  - (g) railway equipments or materials;
  - (h) agricultural produce;

## Service Tax: A Practitioner's Perspective

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- (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
  - (j) chemical fertilizer and oilcakes;
21. Services provided by a goods transport agency by way of transportation of -
- (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
  - (b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
  - (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;
22. Services by way of giving on hire -
- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
  - (b) to a goods transport agency, a means of transportation of goods;
23. Transport of passengers, with or without accompanied belongings, by -
- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
  - (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or
  - (c) ropeway, cable car or aerial tramway;
24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;
25. Services provided to Government, a local authority or a governmental authority by way of -

## Negative List and Exempted Services

- (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
  - (b) repair or maintenance of a vessel or an aircraft;
26. Services of general insurance business provided under following schemes -
- (a) Hut Insurance Scheme;
  - (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
  - (c) Scheme for Insurance of Tribals;
  - (d) Janata Personal Accident Policy and Gramin Accident Policy;
  - (e) Group Personal Accident Policy for Self-Employed Women;
  - (f) Agricultural Pumpset and Failed Well Insurance;
  - (g) Premia collected on export credit insurance;
  - (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
  - (i) Jan Arogya Bima Policy;
  - (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
  - (k) Pilot Scheme on Seed Crop Insurance;
  - (l) Central Sector Scheme on Cattle Insurance;
  - (m) Universal Health Insurance Scheme;
  - (n) Rashtriya Swasthya Bima Yojana; or
  - (o) Coconut Palm Insurance Scheme;
27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

## Service Tax: A Practitioner's Perspective

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- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and
  - (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;
- 28. Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -
  - (a) as a trade union;
  - (b) for the provision of carrying out any activity which is exempt from the levy of Service tax; or
  - (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;
- 29. Services by the following persons in respective capacities -
  - (i) sub-broker or an authorised person to a stock broker;
  - (ii) authorised person to a member of a commodity exchange;
  - (iii) mutual fund agent to a mutual fund or asset management company;
  - (iv) distributor to a mutual fund or asset management company;
  - (v) selling or marketing agent of lottery tickets to a distributor or a selling agent;
  - (vi) selling agent or a distributor of SIM cards or recharge coupon vouchers;
  - (vii) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
  - (viii) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;
- 30. Carrying out an intermediate production process as job work in relation to -
  - (a) agriculture, printing or textile processing;

## Negative List and Exempted Services

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- (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985 (5 of 1986);
  - (c) any goods on which appropriate duty is payable by the principal manufacturer; or
  - (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;
31. Services by an organiser to any person in respect of a business exhibition held outside India;
32. Services by way of making telephone calls from -
- (a) departmentally run public telephone;
  - (b) guaranteed public telephone operating only for local calls; or
  - (c) free telephone at airport and hospital where no bills are being issued;
33. Services by way of slaughtering of animals;
34. Services received from a provider of service located in a non-taxable territory by -
- (a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
  - (b) an entity registered under Section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
  - (c) a person located in a non-taxable territory;
35. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material;

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36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);
37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

Further, following services are exempt up to 30<sup>th</sup> September, 2012\*

**TABLE**

Sl. No.	Description of taxable services
1.	Service of transportation of passengers, with or without accompanied belongings, by railways in -- (A) first class; or (B) an air conditioned coach
2.	Services by way of transportation of goods by railways

\*This is the current date prescribed in the exemption notification. However, the date can be extended subsequently.

## Chapter 7

# Concept of Service Provider and Receiver

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The question of taxing a service arises where a service is provided by one person to another, i.e. by a service provider to the service receiver.

Thus, any activity provided by person to self is outside the ambit of taxable service.

“Service provider” and the “service receiver” can be any person. Person is defined in Section 65B(37) to include:

- (a) an individual;
- (b) a Hindu Undivided Family (HUF)
- (c) a company
- (d) a society
- (e) a limited liability partnership
- (f) a firm
- (g) an association of persons or body of individuals, whether incorporated or not
- (h) Government
- (i) a local authority
- (j) Every artificial juridical person, not falling within any of the preceding categories

Further, by virtue of explanations 3 and 4 in the definition of service in Section 65B(44), establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory are treated as establishment of distinct persons. Branch or agency or representational office could be treated as an establishment if any business activity is carried out through such branch, agency etc.

Similarly, an unincorporated association or a body of persons and member thereof are treated as distinct persons.

## Service Tax: A Practitioner's Perspective

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The above provisions have been inserted to enable levy of tax on services provided by offices of an entity located in India and abroad (i.e. service received by such offices in India or services provided by them to their overseas offices) and also between members and unincorporated bodies (such as members and club) by treating them as separate persons.

Further, unincorporated joint ventures or profit sharing arrangements could be treated as a separate person from the persons forming such joint ventures or entering into arrangement in certain circumstances.

Where the criteria discussed above are satisfied, the tax would be levied on the service provider who would be liable to collect the service tax amount from the service receiver and remit it to the government in the manner prescribed. However in certain cases, the statute requires the service receiver to pay the service tax to the Government (i.e. Reverse Charge Mechanism, the detail discussion of Reverse Charge Mechanism in Chapter 12).

## Chapter 8

# Taxable Territory

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Services are taxable only when they are provided in the taxable territory.

'Taxable territory' has been defined under Section 65B(52) of the Finance Act to mean the territory to which the provisions of Chapter V of the Finance Act apply.

The provisions of Chapter V of the Finance Act, 1994 apply to the whole of the territory of India excluding the state of Jammu and Kashmir.

Thus, state of Jammu and Kashmir is treated to be outside the taxable territory for the purpose of Service tax. Accordingly, no Service tax is applicable if the services are provided outside India or in the state of Jammu and Kashmir.

Definition of 'India' has been provided under sub-section 27 of Section 65B, according to which India means:

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

Note: The place where services are provided is determined in accordance with the Place of Provision of Service Rules, 2012 (discussed in the subsequent chapter).

## Chapter 9

# Place of Provision of Service Rules, 2012

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The Central Government by exercising its powers vested under u/s 66C of the Finance Act notified Place of Provision of Service Rules 2012 to determine the place where the services will be treated to be provided.

The significance of these rules is that if the services are treated to be provided in the taxable territory, Service tax is applicable on such services. Whereas if the services are treated to be provided outside the taxable territory, they are not subject to Service tax (i.e. non-taxable) and at the same time could be treated as 'export' subject to fulfillment of conditions specified in this regard (Rule 6A of the Service tax Rules, 1995).

The place of Provision of Service Rules have replaced the 'Export of Service Rules, 2005' and 'Taxation of Services (Provided from Outside India and Received in India) Rules, 2006'.

Key Provisions of these rules are discussed herein below:

### **Place of provision generally (Rule 3):-**

The place of provision of a service shall be the location of the recipient of service:

Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

### **Place of provision of performance based services (Rule 4):-**

The place of provision of the 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:

## Place of Provision of Service Rules, 2012

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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.

### **Place of provision of services relating to immovable property (Rule 5):-**

The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

### **Place of provision of services relating to events (Rule 6):-**

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

### **Place of provision of services provided at more than one location (Rule 7):-**

Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

### **Place of provision of services where provider and recipient are located in taxable territory (Rule 8):-**

Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

### **Place of provision of specified services (Rule 9):-**

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 (i.e., providing data or information, retrievable or otherwise, to any person in electronic form through a computer network);
- (c) Intermediary services - 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;
- (d) Service consisting of hiring of means of transport, upto a period of one month.

### **Place of provision of goods transportation services (Rule 10):-**

The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

### **Place of provision of passenger transportation service (Rule 11):-**

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 (i.e. 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 stop-over between any of the legs of the journey for which one or more separate tickets or invoices are issued).

**Place of provision of services provided on board a conveyance (Rule 12):-**

Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

**Powers to notify description of services or circumstances for certain purposes (Rule 13):-**

In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

**Order of application of rules (Rule 14):-**

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.

**Location of Service Provider and Receiver**

Location of 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

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

In the case of telecommunication service, the usual place of residence shall be the billing address.

Location of 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.

"Usual place of residence" in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

## Chapter 10

# Classification of Services

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With the introduction of Negative list approach based taxation, the need for classification of services had been done away with. All activities are chargeable to Service tax except the ones particularly excluded. However, Government has still continued with giving specific definitions in relation to activities which have been excluded/ included from Service tax regime. Now the classification is relevant with respect to coverage in the following:

- negative list of services
- declared list of services
- exemption notification
- applicable rule under the Place of Provision of Services Rules, 2012
- certain other rules and notifications.

Further, a composite service may consist of two or more different services, termed as “bundled services”. Even in such a case, it is necessary to determine the classification to determine whether such service is subject to service tax.

The principle to decide the classification is contained in new Section 66F of the Act, which reads as follows:-

Principles of interpretation of specified descriptions of services or bundled services -

- (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.
- (2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.
- (3) Subject to the provisions of sub-section(2), the taxability of bundled service shall be determined in the following manner, namely:-
  - (a) If various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as

## Service Tax: A Practitioner's Perspective

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provision of the single service which gives such bundle its essential character;

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

Explanation – for the purpose of sub-section (3), the expression “bundled service” means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

## Chapter 11

# Valuation of Services

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The valuation of services under service tax is governed by the provisions made under section 67 of the Finance Act, 1994 and the Rules framed thereunder. Accordingly, following points are important in relation to valuation of services:

- Value of taxable service shall be determined on the basis of one of the following:
  - a. consideration in money for providing the service.
  - b. consideration in money + consideration in any other form
  - c. consideration which is not ascertainable

The consideration which is not ascertainable shall be determined in a manner as prescribed in Service Tax (Determination of Value) Rules, 2006

- The value of taxable service shall be the gross amount charged for providing such service in ordinary course of trade and the gross amount charged is the sole consideration.
- When value cannot be determined by the method given as above, then the service provider shall determine the equivalent money value of such consideration which shall in no case be less than the cost of provision of such taxable service.
- Any expenditure or costs incurred by the service provider in course of providing taxable service shall be treated as consideration for the taxable service provided and shall be included in the taxable value. However the expenditure incurred as "Pure Agent" shall not be included in the gross amount charged.

Specific cases in which the commission, costs, etc. shall be included or excluded are provided under rule 5 and 6 of the Service Tax (Determination of Value) Rules, 2006

## What is Consideration?

Following terms have been explained in Section 67 by way of an Explanation—

*'Consideration'* has been explained to include any amount that is payable for the taxable services provided or to be provided. It means any amount that is payable i.e. past, present and future liability, all are included. Also services may have already been rendered, being rendered or to be rendered in future. Amount payable, whether paid or not or whether recovered or not shall be included in 'consideration'.

## Meaning of gross amount charged

- The "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.
- The gross amount charged can be inclusive of service tax. In such a case the value shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.(e.g. if gross amount charged, including service tax is Rs.100. Then the value of taxable service shall be Rs.89 and the service tax payable shall be Rs.10.68 plus Education Cess Rs.0.32)
- The gross amount charged for taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

## Determination of value of service portion in the Execution of a Works Contract

The value of taxable services involved in the execution of work contract shall be determined by the service provider in the following manner:-

- a. Value of work contract service shall be equal to gross amount charged for the works contract less the value of transfer of property in goods involved in execution of said works contract.

## Valuation of Services

This includes items such as labour, amount paid to sub-contractor, cost of consumables etc. as specified in Rule 2A(i)(b) of the Service Tax Determination of Value Rules, 2006.

- b. Where value added tax or sales tax has been paid/ payable on the actual value of property in goods transferred in the execution of the works contract, then such value adopted for the purposes of payment of value added tax or sales tax shall be taken as the value of the property in goods transferred in the execution of the said works contract for determination of the value of service portion. Where the value has not been determined under clause(a), the person liable to pay tax on taxable service involved in execution of work contract shall determine the service tax payable in following manner, namely:-

S.No	Type of transaction	Taxable value
i	work contracts entered into for execution of original works	40% of the total amount charged for the works contract.
ii	work contract entered into for Maintenance or Repair or Reconditioning or Restoration or Servicing of any goods	70% of the total amount charged for the works contract
iii	Other works contracts not covered above These would include Maintenance, Repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of any immovable property	60% of total amount charged for the works contract

Total amount means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in/ or in relation to the execution of the works contract (to be determined in accordance with the generally accepted accounting principles), whether or not supplied under the same contract or any other contract, after deducting:

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

### **Determination of value of service in relation to money changing**

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

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

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

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

### **Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering**

The value of service portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following Table, namely:-

**TABLE**

Sl. No.	Description	Percentage of the total amount
1.	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40
2.	Service portion in outdoor catering wherein	60

## Valuation of Services

	goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	
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Service provider shall not take CENVAT Credit of duties or cess paid on any goods classifiable under chapter 1 to 22 of the Excise Tariff Act, 1985 (vide explanation to Rule 2C of Service tax (Determination of Value) Rules, 2006.

Total amount charged means the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting (a) the amount charged for such goods or services, if any; and (b) the value added tax or sales tax, if any, levied thereon.

### Other Important Considerations

A new Section 67A has been inserted vide Finance Act, 2012 to determine the date which will be considered for determination of rate of tax, value of taxable service and rate of exchange.

As per this section the rate of service tax, value of a taxable service and rate of exchange, if any shall be the rate of service tax or value of taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

## Chapter 12

# Person Liable to Deposit Tax

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Generally, Service tax is required to be deposited by the provider of service.

The service provider typically collects the Service tax amount from the service receiver and remits it to the government in the manner prescribed.

However in certain cases, the statute requires the service receiver to pay the whole/ partial Service tax to the government under a reverse charge mechanism ('RCM').

For the following services, whole of Service tax has been delegated to the service recipient under the RCM:

- Service provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;
- Service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the consignor or the consignee 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 there under;
  - (e) any body corporate established, by or under any law; or
  - (f) any partnership firm whether registered or not under any law including association of persons;

(Any person who pays the freight or is liable to pay the freight would be liable to pay the Service tax)

## Person Liable to Deposit Tax

- Service provided or agreed to be provided by way of sponsorship, to any body corporate or partnership firm located in the taxable territory;
- Service provided or agreed to be provided by an arbitral tribunal
- Service provided or agreed to be provided by an individual advocate or a firm of advocates by way of legal services
- Service provided or agreed to be provided by a director of a company to the said company
- Support service provided or agreed to be provided by Government or local authority, to any business entity located in the taxable territory except for those specified under the negative list;
- Service provided or agreed to be provided by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons by way of renting or hiring any motor vehicle designed to carry passengers on abated value to any person (business entity registered as body corporate) who is not engaged in the similar line of business
- 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 taxable territory.

**Partial Reverse Charge Mechanism-** Finance Act 2012 read with Notification No 30/2012-ST dated 20<sup>th</sup> June, 2012 effective from 1<sup>st</sup> July, 2012 has introduced partial reverse charge mechanism, where both the service provider and service receiver will be considered as persons liable to pay Service tax on notified taxable services and to the extent specified against each one of them.

The scheme is being introduced for four services where the service provider is either an individual or a firm or LLP or HUF or association of person and the recipient is a body corporate. The four services and the portion of tax payable are as follows:

Sl.No.	Description of service	Service recipient	Service provider
1.	Hiring of a motor vehicle designed to carry passengers on non-abated value to any person not		

### Service Tax: A Practitioner's Perspective

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	engaged in similar line of business	40%	60%
2.	Supply of manpower for any purpose	75%	25%
3.	Security service	75%	25%
4.	Works contract service	50%	50%

The liability to pay Service tax by the service recipient under the RCM is irrespective of SSI exemption if any available to service provider (i.e. quantum of gross service value of the service provider in the year is less than prescribed limit). In other words, even if the turnover of the service provider (who is providing above mentioned services) is less than prescribed limit of Rs 10 lakh, the service recipient would be liable to deposit Service tax with the government treasury.

## Chapter 13

# Point of Taxation

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Point of Taxation Rules, 2011, came into force w.e.f. 01.07.2011. The term 'point of taxation' means the point of time when a service shall be deemed to have been provided. One of the most striking features of Point of Taxation Rules, 2011 is that the basis of payment of Service Tax has been shifted from 'Receipt Basis' to 'point of taxation basis' which shall be determined according to the Point of Taxation Rules, 2011 framed in this regard.

Service Tax is now to be paid by **the 5<sup>th</sup> /6<sup>th</sup> of the month** (as the case may be), following the month in which the **Point of taxation arises** i.e. following the month in which **service is deemed to have been provided**. However, for the month of March, Service Tax liability is to be discharged by **31<sup>st</sup> March itself**.

One of the most striking features of Point of Taxation Rules, 2011 ('PoTR') is that the liability for payment of Service tax has been shifted from 'receipt basis' to 'point of taxation basis' which shall be determined according to these rules.

**A brief outline of the said rules has been given below:**

### **Determination of Point of Taxation:-**

**As per Rule 3 of Point of Taxation Rules, 2011:-**

Point of taxation (i.e. Point of time when a service shall be deemed to have been provided) would be –

- (a) **Receipt of advance** – point of taxation is the date of receipt of advance, to the extent of the amount received
- (b) **If invoice is issued within prescribed period of 30 days from the date of completion of provision of service** – point of taxation is the date of issuance of Invoice of service provided or agreed to be provided
- (c) **If invoice is not issued within the prescribed period of 30 days from the date of completion of provision of service**– point of taxation is:

## Service Tax: A Practitioner's Perspective

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- Date of completion of the provision of service provided or agreed to be provided, or
- Date of receipt of payment (including advance)(to the extent of payment received) or whichever is earlier

However, in case of Continuous Supply of service, following date will be deemed as date of completion of provision of service (Proviso of Rule 3 of PoTR):-

- (i) 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 service receiver 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 date of completion of provision of service. Thus, point of taxation will be determined accordingly
- (ii) Wherever the provider of taxable service receives a payment upto rupees one thousand in excess of amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of provider of taxable service, shall be determined in accordance with (b) above, i.e. earlier of date of invoice (if raised within prescribed limit, else date of completion of service) or date of payment.

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 obligation for payment periodically or from time to time or where the Central Government, by a notification in the official gazette prescribes provisions of a particular service to be a continuous supply of service, whether or not subject to any condition.

Note: Supply of the following services are treated as continuous supply of service even if provided for three months or less:

1. Telecommunication Services
2. Service portion in execution of a works contract

(vide notification no. 38/2012)

## Determination of Point of Taxation in case of Change in Effective Rate of Tax (Rule - 4):-

Change in effective rate of tax includes a change in the portion of value on

which tax is payable in terms of a notification issued by the Government. In such cases, this special rule is applicable.

**In case a taxable service has been provided before the change in effective rate of Tax:**

- Where invoice is issued and payment is received after change in rate, new rate will be charged
- Where invoice is issued prior to change in rate but payment is received after such change, old rate will be charged
- Where payment is received before such change in rate but invoice has been issued after such change, old rate will be charged

**In case a taxable service has been provided after the change in effective Rate of Tax, the point of taxation shall be as under:**

- Where invoice is issued prior to change in rate but payment is received after such change, new rate will be charged
- Where invoice is issued and payment is received prior to such change in rate, old rate will be charged
- Where payment is received before change in rate but invoice has been issued after such change, new rate will be charged

### **Payment of Tax in case of New Service (Rule- 5):**

Where Service is taxed for the first time, then-

- No tax shall be payable to the extent the invoice has been issued and payment received against such invoice before such service became taxable
- No tax shall be payable if payment is been received before the service become taxable and invoice issued within 14 days of date when service is taxed for the first time.

### **Point of Taxation in case of Specified Services or Persons (Rule – 7):**

In case where the persons required to pay tax as recipient of service under the rules made in this regard in respect of services notified under sub-section (2) of Section 68 of Finance Act, 1994 point of taxation will be the date on which payment is made (e.g., import of services, lawyer services etc. as discussed in Chapter 12 of this book).

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Provided that, where the payment is not made within a period of six months of the date of invoice, Point of Taxation shall be determined as if this rule does not exist. In other words, point of taxation in such cases would be determined as per rule 3 of Point of Taxation Rules.

Provided further that in case of associated enterprises where the person providing the service is located outside India, the point of taxation shall be earlier of the following two dates:-

- (i) Date of debit in the book of account of the person receiving the service; or
- (ii) Date of making the payment.

### **Determination of Point Of Taxation in case of Copyrights etc.(Rule - 8):**

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 the service was performed (which means when the provision of service is made) 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.

### **Determination of Point of Taxation in other cases (Rule 8A):-**

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.

## Chapter 14

# CENVAT Credit Rules 2004

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The CENVAT Credit Rules, 2004 specify the duties and the taxes which can be used for setting off the Service tax liability to be discharged on output services. Further, these rules specify the conditions to be fulfilled by the service providers in order to claim these set off.

CENVAT credit is not available in respect of the central excise duty paid on inputs and Service tax paid on input services used exclusively for providing an exempted service or for manufacture of exempted goods. Further, no CENVAT credit shall be allowed in respect of capital goods, which are used exclusively in manufacture of exempted goods or in providing exempted services.

Exempted service means:

- a taxable service which is exempt from the whole of Service tax leviable thereon; or
- service on which no Service tax is leviable under Section 66B of the Finance Act; or
- 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.

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 or goods in respect of which the benefit of the payment of lower rate of excise duty (i.e. 2%) is availed.

CENVAT credit in respect of input services shall be allowed on or after the day when payment is made to input service provider. Further, w.e.f. 1<sup>st</sup> July, 2011, CENVAT credit is allowed on or after the day on which invoice, bill etc. in respect of input service is received. However, if payment of the value of input service and Service tax thereon is not made within 3 months of the date of invoice, the manufacturer or output service provider is liable to pay an

## Service Tax: A Practitioner's Perspective

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amount equal to the CENVAT credit availed which can again be taken on the payment.

Further, CENVAT Credit in respect of inputs and capital goods shall be admissible once such inputs or capital goods reach the provider of output service subject to maintenance of documentary evidence of delivery and location of the inputs.

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

### Concepts

The definition of 'input' contained in rule 2(k) has been revised.

For better understanding of the definition of input, generally applicable inclusions and exclusions have been tabled below

Inclusions	Exclusions
All goods used in the factory by the manufacturer of the final product	Light diesel oil, high speed diesel oil, Motor spirit commonly known as petrol
Any goods including accessories cleared along with the final product, the value of which is included in the value of final product and goods used for providing free warranty for final products	Any goods used for: a) the construction or execution of works contract of a building or a civil structure or any part thereof, or b) laying of foundation or making of structure for support of capital goods, except for the provision of service portion in the execution of works contract or construction service covered as declared service.
All goods used for generation of electricity or steam for captive use also constitute inputs.	Capital goods except when used as parts or components in manufacture of final product

## CENVET Credit Rules 2004

All goods used for providing an output service	Goods used primarily for personal use or consumption of any employee including food articles, food items, goods used in a Guest House, Residential Colony, Club, Recreation facility and clinical establishments.
	Goods having no relationship whatsoever with the manufacture of final product.
	Motor Vehicles

The above provisions are generally applicable; however, in specified circumstances CENVAT credit can also be claimed even with respect to the exclusions or denied for inclusions pointed out above.

### Definition of capital goods

"Capital goods" as per Rule 2(a) of CENVAT Credit Rules 2004, means:

- (A) The following goods, namely –
1. All goods falling under chapters 82, 84, 85, 90 [heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804] of the First Schedule to Excise Tariff Act
  2. Pollution control equipment
  3. Components, spares and accessories of the goods specified at clauses (1) and (2) above
  4. Moulds and dies, jigs and fixtures
  5. Refractories and refractory materials
  6. Tubes and pipes and fittings thereof;
  7. Storage tank, and
  8. 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 manufacturer of final products, but does not include any equipment or appliance used in an office or

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- (1A) Outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory; or,
- (2) for providing output service.
- (B) Motor vehicles 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 passenger
  - (ii) Renting of such motor vehicle
  - (iii) Imparting motor driving skills
- (D) Components, spares and accessories of motor vehicles, which are capital goods for the assessee.

### Restriction in case of capital goods

As per Rule 4(2)(a) of CCR 2004, the CENVAT credit in respect of capital goods received in the premises of the service provider who provides taxable services, shall be taken for an amount not exceeding 50% of the duty paid on such capital goods in the financial year in which such capital goods are procured. The balance credit can be taken in any subsequent financial year if the capital goods are in possession of such service provider.

The criterion as to possession would not apply to components, spares, accessories, refractories and refractory materials, moulds, dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of First Schedule of Excise Tariff Act. However, full CENVAT credit will be allowed in the same financial year in respect of capital goods which are cleared as such in the same financial year.

## Input service

For better understanding of the definition of input services under Rule 2(l), inclusions and exclusions which has been tabled below:-

Any service used by the provider of output service for providing output service or,

Used by a manufacturer whether directly or indirectly in or in relation to manufacture of final product and clearance of final product up to the place of removal

The above provisions are generally applicable provisions, however, in specified circumstances CENVAT credit can also be claimed even with respect to the exclusions or denied for inclusions pointed out above.

## Definition of input service

As per definition of input services under Rule 2(l), following inclusions and exclusions in its scope are important:-

Inclusions	Exclusions
Services used in relation to A) Premise related: Modernization or renovation or repairs of the factory premises of provider of output service or an office relating to such factory or premises	Service portion in the execution of a works contract and construction services covered as declared service (herein 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 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) Publicity related: • Advertisement or sales promotion • Market research	Services provided by way of renting of a motor vehicle , in so far as they relate to a motor vehicle which is not a capital goods ; or

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<p>C) Goods Related:</p> <ul style="list-style-type: none"> <li>• Storage up to the place of removal</li> <li>• Procurement of inputs</li> <li>• Inward transportation of inputs or capital goods and</li> <li>• Outward transportation up to the place of removal</li> </ul>	<p>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-</p> <p>(a) A manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person ; or</p> <p>(b) An insurance company in respect of a motor vehicle insured or reinsured by such person;</p>
<p>D) Miscellaneous:</p> <ul style="list-style-type: none"> <li>• Accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, business exhibition, legal service</li> </ul>	<p>Services such as those provided in relation to outdoor catering, beauty treatment, health service, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefit extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee.</p>

The above provisions are generally applicable provisions, however, in specified circumstances CENVAT credit can also be claimed even with respect to the exclusions or denied for inclusions pointed out above.

### **Duties/taxes which can be considered for set off or availing credit**

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

- Basic Excise Duty (First Schedule to Central Excise Tariff Act, 1985 ('CETA'))
- Special Excise Duty (Second Schedule to CETA)

- Service tax u/s 66, 66A and 66B of Chapter V of Finance Act
- Education Cess on excisable goods and on taxable services
- Secondary and Higher Education Cess on excisable goods and on taxable services
- Countervailing Duty u/s 3 of Customs Tariff Act on imported goods (duty equivalent to excise duty on like article, special additional duty in lieu of VAT)
- Various duties of Excise (such as Additional duty of Excise under Textile and Textile Article Act or Goods of Special Importance Act, National Calamity Contingent Duty, etc)

The aforesaid duties/ taxes should have been paid on input or capital goods or input services received in the premises of the provider of output service on or after 10<sup>th</sup> Sep, 2004.

A service provider cannot claim credit of additional duty (SAD 4%) leviable under Section 3(5) of the Customs Tariff Act, by virtue of proviso to Rule 3(4) of CENVAT credit Rules 2004.

The credit of Education Cess and Secondary and Higher Education Cess (whether on input services or excisable goods) is to be used only for payment of Education Cess and Secondary and Higher Education Cess respectively on output services.

#### **Utilisation of CENVAT credit: -**

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

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

## Service Tax: A Practitioner's Perspective

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In order to set-off liability of a period (month/ quarter, as the case may be), CENVAT credit shall be utilized only to the extent of credit available on the last day of that month/ quarter, as the case may be.

CENVAT credit cannot be used for payment of Service tax in respect of service where the person liable to pay tax is the service recipient under Reverse charge mechanism ('RCM'). In other words, for liability under RCM, Service tax has to be paid in cash and cannot be paid by availing CENVAT credit.

### When inputs/capital goods are removed outside the premises-Rule 3(5)

As per Rule 3(5), when inputs or capital goods on which CENVAT credit has been taken, are removed as such from the premises of the service provider, the CENVAT credit availed in respect of such inputs or capital goods has to be paid. However, such payment is not required if removal of such inputs or capital goods is made for providing output service.

Rule 3 (5) further provides that the reversal of credit/ payment of duty would not be required on inputs when they are removed outside the factory for providing free warranty for final products. For this purpose, free warranty means 'warranty' provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer.

However, if the capital goods, on which CENVAT Credit has been taken, are removed after being used, whether as capital goods or scrap or waste, 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:-

- (a) 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%

- (b) 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 duty leviable on transaction value.

### **When inputs/capital goods are written off fully/partially – Rule 3(5B)**

When inputs or capital goods before being put to use on which CENVAT Credit has been taken are written off fully or partially or where any provision for such write off is made in the books of accounts then the manufacturer or service provider shall pay an amount equivalent to the CENVAT credit taken on such input or capital goods. Subsequently where such inputs or capital goods are put to use for manufacture of final product or for provision of output service, the manufacturer or output service provider would be entitled to take credit of the amount paid earlier subject to the other provisions in the Rules.

### **Can the inputs or capital goods on which CENVAT credit is claimed, be sent out to a sub contractor for processing?**

The inputs or capital goods on which credit has been claimed, can be sent out under Rule 4(5)(a) of CENVAT Credit Rules 2004 to a job worker for processing, testing, reconditioning etc. The goods after processing, testing etc are to be received back in the premises of the manufacturer within 180 days from the date of sending the same. Where goods are not received back within the prescribed period, the CENVAT credit availed earlier in respect of such inputs or capital goods needs to be reversed or to be paid back. The CENVAT credit can again be claimed on receipt of such inputs or capital goods in the factory.

### **Obligation of the service provider where he provides both taxable as well as exempted services (Rule 6 of CCR 2004): - w.e.f 1<sup>st</sup> April, 2011**

The CENVAT credit on inputs and input services can be availed of by service provider to the extent attributable to taxable services. Where provider of output service avails CENVAT credit in respect of any inputs or input services and provides such output services which are chargeable to tax as well as exempted services, in that case the provider of output service can avail proportionate credit.

The assessee can opt for either of the following options in this regard:-

### **option I**

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

### **option II**

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

1. The service provider has to pay 6% of value of the exempted services and exempted goods from 1<sup>st</sup> April, 2012.
2. The provider of output service shall pay amount equivalent to the CENVAT credit attributable to inputs and input services used in or in relation to manufacture of exempted goods or for provision of output services subject to conditions and procedures specified in sub rule (3A).
3. Maintain separate accounts for the receipt, consumption and inventory of inputs meant for use in the dutiable/ exempted services and dutiable/ exempted goods. Take the CENVAT credit only on that quantity of input or input service which is intended for use in providing output service on which Service tax is payable 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

#### **Note:**

1. But here it should be noted that a specific explanation is inserted to Rule 6(3) by which the credits on inputs or input services that are solely used in or in relation to manufacture of exempted goods or provision of exempted services cannot be availed.

**Documents which are eligible for taking CENVAT Credit**

CENVAT credit should be availed only on the basis of specified documents as a proof of payment of duty in inputs or service tax on input services. These are prescribed in rule 9(1) of CENVAT Credit Rules. In terms of Rule 9(2), if there is any defect in duty paying documents, specific permission of Assistant or Deputy Commissioner of Central Excise is required Credit can be taken on the basis of following documents —

- Invoice of Manufacturer from factory.
- Invoice of manufacturer from his depot or premises of consignment agent.
- Invoice issued by registered importer.
- Invoice issued by importer from his premises or consignment registered with Central Excise.
- Invoice issued by registered first stage or second stage dealer.
- Supplementary Invoice issued by supplier-manufacturer or service provider.
- Bill of Entry.
- Certificate issued by an Appraiser of Customs in respect of goods imported through foreign post office.
- Challan of payment of tax where service tax is payable by other than input service provider (GAR 7).
- Challan of payment of service tax paid by the service receiver on reverse charge basis.
- Invoice, bill or challan issued by provider of input service on or after 10-9-2004.
- Invoice, Bill or challan issued by input service provider under Rule 4A of Service Tax Rules.

**Other Provisions of CENVAT Credit Rules, 2004**

**CENVAT Refund** A simplified scheme for refunds is being introduced by Finance Act, 2012 by substituting the entire Rule 5 of CCR, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover;

Refund amount =

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

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- (A) Refund amount means the maximum refund that is admissible;
- (B) Net CENVAT credit means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3 (i.e. REMISSION OF DUTY), during the relevant period;
- (C) Export turnover of goods means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;
- (D) Export turnover of services means the value of the export service calculated in the following manner:

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

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

Further, in relation to refund of CENVAT credit under Rule 5 of CENVAT Credit Rules, Government has recently issued Notification No. 27/2012-C.E. (N.T.), dated 18-6-2012, superseding earlier notification No. 5/2006-C.E. (N.T.) dated 14-3-2006. Due to such supersession, there is a marked difference in procedure to be followed for CENVAT refund such as:

- Certificate by statutory auditor made mandatory regardless of amount of refund;
- Refund claims can now be made quarterly only (as against monthly claims which were allowed earlier in respect of units with export turnover of more than 50% or EOUs);
- Export turnover to be calculated as per rule 5 (1) (D) of CENVAT Credit Rules.

### **Refund of CENVAT Credit for services taxed under reverse charge (Rule 5B)**

- Under Rule 5B, inserted w.e.f. 1.7.2012 vide Notification No. 28/2012-CE(NT) dated 20.6.2012, refund of CENVAT Credit has

been introduced to enable a provider of service who is not able to take full credit of CENVAT credit due to the liability to deposit tax simultaneously being conferred on the service recipient.

Another very important change is the amendment in Rule 14 of CENVAT Credit Rules, 2004 by which the CENVAT credits would be recoverable only if the CENVAT credits are taken and utilized wrongly. Therefore, the CENVAT credits would not be payable merely when the credits are availed wrongly, without being utilized. It is an important change, since till 17.03.2012, the recovery proceedings had been initiated even in case the CENVAT credit is either taken or utilized wrongly.

## Chapter 15

# Payment of Tax and Interest

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### Payment of Tax

In terms of Rule 6 of STR, 1994 read with Section 68 of the Act, the Service tax is required to be paid on monthly basis by all Service providers, other than individuals or proprietary/ partnership concerns who are required to pay Service tax on quarterly basis.

Service tax amount due for a particular month or quarter is required to be deposited by the 5<sup>th</sup> day of the month following the month or quarter (6<sup>th</sup> day in case the payment is made electronically) in which the service is deemed to be provided. However, for the month/quarter ending March, the payment is required to be made by the 31<sup>st</sup> March itself by all taxpayers.

From 1<sup>st</sup> April, 2010 e-payment of Service tax has been made mandatory for the assesseees who have paid Service tax of Rs.10 Lakhs (cash+ CENVAT) or above during the last financial year or those who have paid Service tax of Rs.10 Lakhs (cash + CENVAT) or more during the current financial year.

If the assessee deposits the amount of tax liable to be paid by cheque then the date of presentation of the cheque to the designated bank would be treated as the date of payment of Service tax provided the cheque is realized.

The amount shall be paid into the designated bank account using the form GAR-7 which is filled up. The amounts are to be rounded off to the nearest rupee. Separate accounting codes have been notified for Service tax, education cess, secondary and higher education cess, interest, penalties etc. for deposition of these amounts

In case excess payment of Service tax has been made, its adjustment is subject to the condition that the excess amount paid was on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

With the introduction of Point of Taxation rules, 2011, taxpayers should be careful in correctly determining their Service tax liability, since liability to deposit tax could arise on rising of invoice or receipt of advance as case may be.

## Interest

For **delay in payment of Service tax** which is due and payable, interest is charged at the rate of 18% p.a. (from 1<sup>st</sup> April, 2011). However if turnover of assessee is up to 60 Lakhs during any of the financial years covered by the notice or during the last preceding financial year, interest shall be charged at the rate of 15% p.a.

Interest will be charged from the date when Service tax is due till the date of actual payment. In case cheque is presented, the date of presentation of cheque will be considered as the date of payment (provided cheque is realized.)

Further, as per Section 76 of the Act, a person who is liable to pay Service tax, but fails to pay the same on time, shall in addition to such Service tax and interest, pay a penalty of Rs.100 per day for the period during which such failure continues or at the rate of 1% p.m. of such tax whichever is higher. However, the total amount of penalty shall not exceed 50% of Service tax payable.

## Chapter 16

# Threshold Limit

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**What is the Small Service Provider Threshold limit/ Exemption and how is it computed?**

The exemption from payment of Service tax to small service provider provides an added financial advantage so as to enable such service provider to compete with the established businesses in the market.

However, such exemption is optional i.e. such small service providers can opt to pay tax instead of availing the benefit of exemption.

In case of such service provider opting to pay Service tax, the service provider would be entitled to get benefit of CENVAT Credit of duties and taxes paid on capital goods, inputs and input services. By availing this mechanism the effective cost of output service could get reduced.

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

These provisions are governed by **Notification No. 33/2012- ST dated 20<sup>th</sup> July, 2012 (superseding notification no. 6/2005-ST dated 1<sup>st</sup> March, 2005)**, wherein exemption has been provided to service providers who provide taxable services of aggregate value not exceeding the prescribed limit (presently Rs. 10 Lakhs) in the previous financial year. The exemption would be available from Service tax in the next financial year upto first consecutive invoices of Rupees ten lakhs.

Aggregate value refers to the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of Service tax leviable thereon under Section 66B of the Finance Act, 1994 under any other notification.

However, said exemption is not applicable in cases where services are provided under a brand name or trade name. Also, the said exemption is not applicable where service tax is payable under reverse charge mechanism.

## Chapter 17

# Registration

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Under section 69 of the Finance Act, 1994 read with Rule 4 of Service Tax Rules, every person liable to pay service tax is required to get himself registered with the Central Excise / Service Tax department.

Application for registration is required to be made in Form ST-1 to the jurisdictional superintendent of Central Excise/Service tax within 30 days of levy of service tax on such service or, in case of an existing taxable service, within 30 days of the commencement of provision of such service. A person providing more than one taxable service is required to take only one single registration. Depending upon the number of branches, such registration may be centralised or for a single premise. Centralised registration is allowed where the companies have a central billing or accounting system. Details of taxable services provided by the applicant are required to be submitted to the service tax authorities along with other requisite documents, as per the Order No. 2/2011 read with the Trade Notice applicable in the State of Registration within 15 days of online submission of Form ST-1.

The Superintendent of Central Excise shall grant a certificate of registration in form ST-2 within seven days from the date of receipt of the application. If the registration certificate is not granted within seven days, the registration applied for shall be deemed to have been granted. It also specifies that 7 days shall be reckoned from the date, the application for registration is complete in all respects.

Further, Order No. 2/2011-ST dated 13<sup>th</sup> December 2011 specifies the documents required to be submitted by the person applying for registration within 15 days of filing of application i.e. copy of PAN, residence Proof, Constitution of Applicant, Power of Attorney.

Following two categories of persons have also been identified as 'Special Category of Persons' for seeking registration

- Input Service Distributor
- Any provider of taxable service whose 'aggregate value of taxable service' in a financial year exceeds nine lakh rupees.

## Procedure for registration

- Application for registration is to be made online (website [www.aces.gov.in](http://www.aces.gov.in)) in Form ST -1 to the Superintendent of Central Excise.
- The form shall be filed online with all the required details and submitted online itself.
- A printout of the form submitted online shall be taken and alongwith the documents as specified, shall be submitted to the department at the concerned commissionerate.
- The registration certificate will be granted by the department, in Form ST-2, within seven days of filing of an application (complete and properly filled up). In case registration certificate is not issued within seven days, the registration is deemed to have been granted.
- 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 details, such change or information or details shall be amended online and printout of such online amendment along with the requisite documents for proof of change in relation to such amendment shall be intimated, to the jurisdictional AC/DC of Central Excise, as the case may be, within a period of thirty days of such change. This could be done online as well.
- It is pertinent to mention here that from 1<sup>st</sup> July, 2012, the concept of categorization has been done away with. Accordingly new application form for service tax registration will be notified in due course.
- **Centralized Registration:**

Rule 4(2) of the Service Tax Rules deal with the option to avail the facility of centralized registration. The provisions are mentioned below:

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 centralized billing system or

centralized accounting system in respect of such service, and such centralized billing or centralized accounting systems are located in one or more premises, he may at his option, register such premises or offices from where centralized billing or centralized accounting systems are located.

- **Surrender of certificate:** 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. On receipt of the certificate, the Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act, and the rules and the notifications issued thereunder, and thereupon cancel the registration certificate.
- **Documents required for registration**
  - Self-certified copy of PAN, (where allotment is pending, copy of the application for PAN may be given)
  - Copy of MOA/AOA in case of Companies
  - Copy of Board Resolution appointing a person as Authorised signatory in respect of Service tax registration to be applied, in case of Companies
  - Copy of Lease deed/Rental agreement of the premises
  - A brief technical write up on the services provided
  - Partnership deed in case of Partnership firm
  - Self-attested copy of address proof of partner/ proprietor/ director or authorised signatory

Further documents required for Centralised Registration: (i) a duly notarized affidavit of the Company Secretary/MD/CEO or Partner or Proprietor, certifying that the assessee is keeping centralized accounting or centralized billing at the premises mentioned in column 6 of ST-1 under sub-rules (2) and (3A) of the Service Tax Rules, 1994 ( i.e. for premises where centralized registration is being sought) and that the addresses of the premises are as per the list provided. (ii) However , in cases the number of branches is less than 10 in number per application/amendment, then the assessee can exercise the option to submit an affidavit, as mentioned above certifying that the list of addresses mentioned in column 5 of the ST-1 are correct or provide proof of address.

## Service Tax: A Practitioner's Perspective

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It is important to mention here that documents as prescribed under Order no. 2/2011-ST are required to be submitted with the jurisdictional AC/DC pursuant to filing ST-1 online. However, any additional documents as prescribed by the commissioner through a trade notice should be considered as well.

**Penal Provisions:** If there is a delay in registration, penalty up to Rs.10000 or Rs.200 per day of delay whichever is higher can be imposed under Section 77(1) of Finance Act,1994. The penalty under section 77 is not automatic. If the assessee can prove that there was a reasonable cause for the delay in registration, the penalty could be waived under section 80.

## Chapter 18

# Documentation & Records

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Every taxable service provider is required to issue a document (i.e. invoice, bill or challan) within 30 days from either the date of completion of provision of taxable service or receipt of any advance/payment towards value of taxable services (whichever is earlier). This time limit was 14 days till 31<sup>st</sup> March, 2012.

In case of continuous supply of service, invoice is to be issued within 30 days of the date specified in the contract for such services, which requires the service receiver to make any payment to service provider. In case service provider is a banking company or a financial institution, such invoice may be raised within a period of 45 days.

In case if specified service providers receive an excess (upto Rs. 1000) of the amount indicated in the invoice and service provider has opted to determine the point of taxation based on the option as given in Point of Taxation Rules, no invoice is required to be issued to such extent.

Such document should be serially numbered and should contain

- The name, address and registration number of the service provider.
- The name and address of the service receiver
- Description and value of taxable service provided.
- Service tax payable thereon

Records in Service tax are to be kept as per Rule 5(1) of the Service tax Rules, 1994. Following records can be kept in the computerized format or otherwise:

- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,-
  - providing of any service;
  - receipt or procurement of input services and payment for such input services;
  - receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;

## Service Tax: A Practitioner's Perspective

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- 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; and
- (iii) all such records shall be preserved for a period of 5 years immediately after the financial year to which such records pertain.

## Chapter 19

# Returns

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Every assessee is required to file a service tax return on a half yearly basis, in Form ST-3. For the periods from April to September and October to March, it must be filed by 25th October and 25th April respectively.

Further, 'Input Service Distributor' is also required to file a return.

The Finance Act, 2012 has introduced a new simplified one page common return with Central Excise-to be called Excise and Service tax Return(EST). However, the same has not been notified yet.

With effect from 1<sup>st</sup> October 2011, it has been made mandatory for all assessees to file Service tax returns electronically (vide notification no.43/2011 dated 25<sup>th</sup>August, 2011).

An assessee can revise Service tax return within 90 days from the date of filing of return to correct any error, omission or mistake. Although there is no restriction in law denying revision of a revised return, however, in practice the electronic system for filing of return does not allow revision of a revised return after expiry of 90 days from the date of original return. In other words, practically an original return or a revised return can be further revised but not beyond the period of 90 days from the date of filling of original return.

Late fees in case of delay in filing of return

- If a half yearly return is filed after due date, then assessee is require to deposit late fees under Section 70(1) of the act read with Rule 7C of STR 1994, depending upon the period of delay. Such late fee can be maximum upto Rs. 20,000/-.
- According to the provisions of Rule 7C of Service tax Rules,1994 late fee depending upon the period of delay is given in the table:

Delay in filing of return after due date	Late fees
First 15 days	Rs.500/-
More than 15 days but not later than 30 days	Rs.1,000/-

## Service Tax: A Practitioner's Perspective

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More than 30 days	Rs.1,000/- + 100 per day beyond 30 days upto a maximum of Rs.20,000/-
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Where 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.

## Chapter 20

# Special Audit

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The Finance Act, 2012 has introduced a new Section related to Special Audit. The section is produced below:-

- (1) If the Commissioner of Central Excise, has reasons to believe that any person liable to pay Service tax (herein referred to as "such person"),--
  - (i) has failed to declare or determine the value of a taxable service correctly; or
  - (ii) has availed and utilised credit of duty or tax paid-
    - (a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or
    - (b) by means of fraud, collusion, or any willful misstatement or suppression of facts; or
  - (iii) has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner he may direct such person to get his accounts audited by a Chartered Accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.
- (2) The Chartered Accountant or cost accountant referred to in sub-section (1) shall, within the period specified by the said Commissioner, submit a report duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified by him.
- (3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force.
- (4) The person liable to pay tax shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilized in any proceeding under the provisions of this Chapter or Rules made thereunder.

## Chapter 21

# Assessment and Adjudication

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First assessment under the Service tax is 'Self Assessment' where every person liable to pay tax himself assess the tax due on services provided by him, and accordingly deposits tax and files a return with the department.

As per Section 73 of the Finance Act,1994 where the Service tax has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer can serve a 'Show Cause Notice' on the person chargeable with Service tax as to why he should not pay the amount specified in the notice.

Such Show Cause Notice can be served within 18 months from the relevant date. However, in case such short payment/ non-levy/refund was by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of the provisions with the intent to evade payment of Service tax the time limit for servicing a Show Cause Notice would be five years from the 'relevant date'.

After considering the representation from the concerned person, Central excise officer determines (i.e. adjudicates) the amount of tax payable along with interest, penalty, if any.

Central excise officers have been empowered to adjudicate in the following cases:

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

Further, where the assessee has failed to furnish Service tax returns or assess the tax properly, Section 72 of the Act authorizes the Central Excise Officer to make best judgment assessment after allowing the assessee to represent his case.

The provision related to demand of tax, adjudication etc. are governed by Section 73, the provisions of which are summarized in the following table:

## Assessment and Adjudication

Initiation of proceedings under Section 73	Whenever there is a short levy or short payment or non-levy or non-payment or erroneous refund, proceedings can be undertaken for adjudication.
Show cause Notice	It is mandatory for the Department to issue a show cause notice before adjudication.
Time limit for communication of Show Cause Notice	<p>(a) Matters Involving fraud, collusion, willful misstatement or suppression of facts or contravention of any provisions with intent to evade payment of duty/tax – notice should be served within 5 years from relevant date.</p> <p>(b) In other cases – notice should be served within 18 months from relevant date.</p> <p>(c) Where the service of notice is stayed by court order, the period of such stay would be excluded in computing this time limit.</p>
From which date the time limit will be computed or the 'relevant date'	<p>The date from which the time limit will be computed is defined as 'relevant date'. It means –</p> <p>(a) Case when periodic return required to be filed, the date on which the half yearly return is filed. If it is not filed, the last date on which it was required to be filed;</p> <p>(b) If there is no such time limit, date of payment of tax.</p> <p>(c) In cases of provisional assessment, the date of adjustment of tax after final assessment.</p> <p>(d) In case of erroneous refund, the date of such refund</p>
Payment to drop proceedings	<p>In case of the Service tax amount, interest as applicable under Section 75 and penalty of 25% of the Service tax within 30 days of receipt of the Show Cause Notice then the entire proceedings is concluded. This provision has been done away with, with effect from 8<sup>th</sup>April,2011.</p> <p>Now if in the course of audit, investigation or verification of the records some short payment is discovered then in such cases the assessee has the option to pay 1% penalty subject to a</p>

## Service Tax: A Practitioner's Perspective

	maximum of 25%. Once intimation is given for payment of the amount, Central Excise Officer shall not serve notice in respect of said amount.
Voluntary payment	In case a service provider pays the Service tax along with the interest and informs the department about such payment in writing before the issue of Show Cause Notice, no notice will be served as per Section 73(3) of Finance Act, 1994. In Finance Act, 2010, explanation was also added to clarify that no penalties can be imposed in such cases.
Recording of assessee's representation	Sub-section 2 to Section 73 makes it mandatory for the officer to consider the representation of the assessee. The officer has to comply with the principles of natural justice.
Form of order	It is mandatory for the officer to pass a speaking order. Speaking order is one, which gives the reasons for the decision. A simple letter asking for payment of duty is not an order.
Payment on passing of the order	The service provider can either pay the tax determined or on the other hand has the right to challenge the order by going into further appeal, which grants him rights of obtaining stay of demanded amounts in appeal.

Other relevant provisions are mentioned as under:

- ❖ As per Section 74 of the Act, the Central Excise Officer who passed any order under the provisions of this chapter may rectify the order if there is any mistake apparent from record in such order. Rectification order can only be passed by the officer who has passed the order. Rectification order can be passed within 2 years from the date of original order. However, if the issue in appeal or revision has been settled no rectification of the same can be done.
- ❖ As per Sec 82 of the Act, if Joint Commissioner of Central Excise has reason to believe that any document or book or things, which in his opinion will be useful for or relevant to any proceedings under the Act, are secreted in any place, he may authorize any Superintendent of Central Excise to search and seize such documents / books / things, or the commissioner may himself do it.

## Assessment and Adjudication

- ❖ Section 72 of the Act authorizes the Central Excise Officer to make best Judgment assessment after allowing the assessee to represent his case, where the assessee has failed to furnish Service tax returns or assess the tax properly. Thus, in cases where the assessee fails to assess tax properly in accordance with provisions of this chapter or fail to furnish the return itself, they could face the risk of best judgment assessment.
- ❖ There are no revisionary powers with the Commissioner. However, the Commissioner may on his own call for and examine the records of any proceedings in which order has been passed by an officer subordinate to him and in case he is not satisfied with the decision, he shall direct such authority or any Central Excise Officer to apply to the Commissioner (Appeals) for determination of such point arising out of the decision or order as the case may be.

Further, the corresponding provisions relating to demand, interest and penalties under Service tax and central excise laws are summarized below:

<i>Section</i>	<i>Equivalent Central Excise Section</i>	<i>Statutory provisions</i>
Section 73	Section 11A (under excise time limit for issuance of notice is one year)	Recovery of duties not levied or not paid or short levied or short paid within one year. This is the principal Section for invoking all demands by the Department.
Proviso to Section 73	Proviso to Section 11A	The above said 18 months will be extended to 5 yrs if the matter involves fraud, collusion, willful misstatement or suppression of fact with intent to evade the payment of duty.
Section 73(4A)	Section 11A(6)	This was inserted by the Finance Act, 2011 setting out that where in course of audit or investigation or verification, it is found there is short levy/non-levy/short paid/not paid Service tax or erroneous refund but transactions are available in records, the

## Service Tax: A Practitioner's Perspective

<i>Section</i>	<i>Equivalent Central Excise Section</i>	<i>Statutory provisions</i>
		Service tax paid fully or partly, along with interest and penalty at 1% of such tax, for each month where default continues, upto 25% of tax amount before notice is issued and inform the Central Excise (CE) officer in writing of same. After receipt of the same, the notice would not be served u/s73(1) and such proceedings in respect of such amount shall be concluded. Any additional amounts could be collected as determined to be payable by the tax officer.
Section 75	Section 11AB	Every person who fails to credit the tax or any part to the Government shall pay simple interest.
Section 78	Section 11AC	Penalty in case of fraud, suppression, willful misstatement etc.
Section 73A	Section 11D	Service tax collected from the service receiver to be deposited with the Central Government
Rule 14 of CENVAT Credit Rules, 2004	Same Rule applies	In the case of CENVAT Credit wrongly taken and utilised or erroneously refunded then the provisions of Section 73 and 75 will apply.

## Chapter 22

# Penal Provisions

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### Penalty u/s 77

General Penalty of up to Rs.10,000 or Rs. 200 per day during which failure continues, whichever is higher for following

- Failure to take registration in accordance with Section 69 or rules made there under
- Failure to furnish information, or failure to produce documents called for by Central Excise Officer or to appear before the Central Excise Officer

Penalty of up to Rs.10,000 for following

- Failure to keep, maintain or retain records in accordance with provisions of this chapter or rules made there under.
- Failure to pay tax electronically by the person required to pay tax electronically
- Failure to issue correct invoices with complete details or failure to record the invoice in books of accounts.

For contravention of any other provisions of the Act where no separate penalty is provided in this chapter shall be liable to a penalty which may extend to Rs.10,000.

### Penalty u/s 78

Where Service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by the reason of :-

1. Fraud or
2. Collusion or
3. Willful mis-statement or
4. Suppression of facts or
5. Contravention of any of the provisions of chapter V of Finance Act, 1994 or of the rules made there under with intent to evade payment of Service tax.

## Service Tax: A Practitioner's Perspective

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The person shall be liable to pay the following penalty under this Section

- ❖ The quantum of penalty shall be equal to the amount of Service tax not levied or not paid or short-levied or short paid or erroneously refunded.
- ❖ Where true and complete details of transactions are available in specified records, penalty shall be reduced to 50% of Service tax so not levied or paid or short levied or short paid or erroneously refunded.
- ❖ Where the Service tax and interest is paid within 30 days, from the date of communication of the order, the penalty will be reduced to 25% of Service tax. The benefit of reduced penalty is available only if the penalty is paid within 30 days of the date of communication of the order. Benefit of reduction in penalty shall not be available in cases of fraud or collusion.
- ❖ In case of a service provider whose value of taxable service does not exceed sixty lakh rupees during any of the years covered by the notice or during the last preceding financial year, the period of thirty days shall be extended to ninety days.
- ❖ If the assessee proves that there was reasonable cause for failure in payment of Service tax, no penalty shall be imposed on him.
- ❖ Penalty u/s 76 & 78 cannot be imposed simultaneously i.e. if penalty is imposed u/s 76 no penalty is to be imposed u/s 78 and vice-versa.

### Prosecution provisions u/s 89

The provisions relating to prosecution were re-introduced *vide* Finance Act 2011, for offences pertaining to evading payment knowingly, wrong availment of input credit, failure to supply information as required by law, failure to deposit Service tax beyond six months from the due-date.

The imprisonment ranges from 6 months to 3 years in case of offences where amount exceeds Rs. 50 Lakhs. In other cases imprisonment may be for a term upto 1 year. However, sanction needs to be granted at the level of Chief Commissioner.

### Provisional Attachment u/s 73C

In certain cases during pendency of any proceeding under Section 73 or

## **Penal Provisions**

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Section 73A, the Central Excise Officer may with previous approval of Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served.

Generally, provisional attachment is valid for 6 months, which may be extended upto 2 years by the Chief Commissioner after recording reasons in writing.

## Chapter 23

# Appeals

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- ❖ As per Section 85, any person aggrieved by the Order passed by an authority subordinate to Commissioner, may appeal to the Commissioner of Central Excise (Appeals) within two months from the date of receipt of decision/order of adjudicating authority. Commissioner (Appeals) can condone the delay (if any) up to the period of one month
- ❖ As per Section 86, any person aggrieved by an order passed by Commissioner of Central Excise or Commissioner of Central Excise (Appeals) , may appeal to the Tribunal (i.e. CESTAT) within three months from the date of receipt of order
- ❖ The Department can also appeal to the Tribunal against the order passed by Commissioner (Appeals) or Commissioner within the prescribed period of four months
- ❖ In case of Appeal to Tribunal, the other party being the respondent has to file memorandum of cross objections within 45 days of receiving of Notice intimating about the Appeal
- ❖ For Appeals to High Court and Supreme Court, concerned provisions of the Central Excise Act 1944 apply. The appeal to High Court can be made against the order of the Appellate Tribunal once the High Court is satisfied that the case involves a substantial question of law. The appeal shall be within 180 days from the date on which the order appealed against is received by the assessee. Appeal shall directly lie to Supreme Court from the order passed by the Appellate Tribunal relating, among other things, to the determination of any question having relation to the rate of tax or the value of services
- ❖ The appeal against the order of the High Court shall be with the Supreme Court once the High Court certifies the case to be one that is fit for appeal to Supreme Court. This may be done on its own motion or on an application by the assessee once the judgment is delivered. The decision of the Supreme Court shall be final and binding on the parties concerned.

## Chapter 24

# Refunds under Service Tax

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### How does the refund work?

Refund can become due to an assessee due to a number of reasons, some of which are enumerated hereunder:-

- a. Excess payment of Service tax due to clerical mistake(s)
- b. Excess payment while making provisional payment of Service tax
- c. Relief allowed in appeal either by the Commissioner (appeals) or by the Tribunal
- d. Wrong calculation of Service tax either due to wrong classification of services or for any other reason
- e. Due to amendment in rules retrospectively or exemption allowed to specific category of service providers.

### Procedure for Making an Application for Refund

Application for refund is to be made in Form 'R' (in triplicate) within 12 months from the date of making excess payment of Service tax which shall be pre-acknowledged by the applicant.

The application should be accompanied by such documentary or other evidence as the applicant may furnish to establish that the amount of Service tax in relation to which such refund is claimed was not collected from, or paid by him and the incidence of such tax had not been passed on by him to any other person.

If on receipt of such application, officer of Central Excise, is satisfied that the whole or any part of Service tax paid by the applicant is refundable; he may make an order accordingly.

If any amount of Service tax ordered to be refunded to any applicant is not refunded within three months from the date of receipt of application, the applicant is entitled to the interest on the amount of refund due to him.

The applicant is entitled to interest from the date immediately after the expiry of three months from the date of receipt of such application till the date of

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refund of Service tax. Interest rate shall not be below 5% and not exceeding 30% per annum, as may be notified by the Government from time to time. At present the notified rate of interest is 6% per annum as per provision of Section 11BB of Central Excise Act, 1944.

For refund of CENVAT credit please refer to discussions under Chapter 14.

## Chapter 25

# Other Miscellaneous Provisions

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- ❖ It is possible for an assessee to obtain advance ruling on Service tax issues under the prescribed scenarios and conditions.
- ❖ Provisions relating to Settlement Commission have been introduced in the Service tax vide the Finance Act, 2012. This should encourage quick settlement of disputes and save the business from the worries of prosecution in certain situations.

## Appendix-1

# Possible Common Errors in Service Tax

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The errors have been bifurcated into the errors in understanding the concepts, errors in systems and others as under:

### Conceptual

This type of error tends to get accepted over a period of time if no issues arise there from

- Services provided outside India being considered as provided in India without reference to Place of Provision of Services Rules
- Services provided in India considered as provided outside India since the service provider is outside India
- Services received from outside India booked as expenditure and service tax not paid
- Services, which are liable for tax not being considered as taxable and tax not discharged
- Incorrect methodology adopted for composite services
- CENVAT credit (input credit or input services credit) missed out due to lack of knowledge on admissibility or wrong clarification by departmental officers
- Credit availed for inputs not used for manufacture of excisable items or provision of taxable services
- On capital goods, 100% credit taken in first year instead of upto 50% which is allowed
- 50% of credit on capital goods of previous year not taken in the subsequent year
- Error in classifying goods as input instead of capital goods
- Exemption claimed without fulfilling prescribed conditions
- Credit on differential duty charged by the supplier by way of an invoice not taken as input

- 6% duty not reversed when both common inputs are used in manufacture of products, which are leviable to duty and exempt, when no separate accounts are maintained to distinguish usage
- For the payment of duty, utilisation of credit availed in respect of the goods received after the relevant month but before the due date of payment
- Non-inclusion of reimbursements related to service in the value adopted for payment of Service tax
- Frequent delays in taking the CENVAT credit necessitating the payment of tax in cash
- Inputs removed on payment of duty when actually the credit had not been taken on the receipt of the same materials
- Service tax registration certificated (ST-1) not amended subsequent to change additional/ deletion of branches
- Wrong availment/ utilization of credit in respect of services not qualifying as input services vide Rules 2(1) of Service tax Rules, 1994
- Partial Reverse Charge Mechanism (RCM) as per Notification 30/2012 may be overlooked
- RCM not paid in cash

## Systems

- The compliance procedures as well as the record keeping aspects have also been covered as under:
- The procedure of not ensuring that tax credits are examined for their eligibility and then only availed
- Not having a proper system of ensuring completeness that credit has been taken on all payments for taxable services. Consequently no available credits missed out
- The system of double-check on credit whether short / excess availed
- Check at regular interval regarding time gap between the bill date and the credit date especially on input services invoices dated after 1<sup>st</sup> April, 2011
- The registration number not mentioned on the invoices

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- The system of raising of invoice much prior to or after the date of service especially during year-ends
- The absence of a system of recording entry in the job work control register when the capital goods are sent for service jobs
- The system of sending and receiving the materials without delivery of challans/ documents

## **Compliance Procedures–Omissions**

- Non-declaration about the records maintained by the assessee which allows the department to invoke extended period of limitation and a valuable defense is lost
- System to ensure that returns are filed in time. The delay in filing of return on a few occasions or beyond a period would lead to making oneself liable for departmental verification/ audit
- Failure to intimate the Department within 30 days of change in the constitution of the firm or company. Such intimation to be given by filing ST-1 online by using ACES utility for making amendment in particulars which is given in ST-2 certificate
- The system of acting on departmental views/ oral instructions, which are not provided in writing

## Appendix 2

Following are some of the common accounting entries while accounting the Service tax related transactions:

Journal Entries to be passed in the books of Service Provider:

### A. Provision of output service

a) Raising of Invoice

Party A/C	Dr.
To Service Charge A/C	
To Service Tax Payable A/C	

b) Receipt of Payment

Bank A/C	Dr.
To Party A/C	

c) Payment of Service Tax

Service Tax Payable A/C	Dr.
To Bank A/C	
To CENVAT credit A/C	

### B. On receipt of input service

a) Receipt of invoice

Service Charge A/C	Dr.
CENVAT credit A/C	Dr.
To Party A/C	

b) Payment Made

Party A/C	Dr.
To Bank A/C	



**Appendix-II**

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CENVAT credit A/c Dr.

CENVAT credit suspense a/c Dr.  
To Party A/C

b. Payment Made

Party A/C Dr.  
To Bank A/C

c. Availment of deferred CENVAT credit of capital goods in next year

CENVAT credit A/c Dr.  
To CENVAT credit suspense a/c

## Appendix 3

### Common Practitioner's Aids

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1. Service tax Reporter – Centax Publication
2. Ex Cus CD ( updated quarterly) – Centax Publication
3. Law Crux – ( additional laws covered but not stable)
4. Taxindiaonline.com, taxmanagementindia.com
5. Website of ICAI [www.icai.org](http://www.icai.org)
6. Website of CCBCAF&SMP [www.icai.org.in](http://www.icai.org.in)
7. CAalley.com
8. CAclubIndia.com
9. [cbec.gov.in](http://cbec.gov.in)
10. [exciseandservicetax.com](http://exciseandservicetax.com)
11. Number of Yahoo groups (Pune, Meerut, CA groups)
12. Sites of leaders in area (articles/ insights)
13. Service tax Commentary by various publication houses.
14. [www.servicetaxdelhi.gov.in](http://www.servicetaxdelhi.gov.in)

## **Feedback Page**

This is the first edition of the Book on Service Tax: A Practitioner's Perspective by the Committee, and, obviously, therefore there is scope for improvement. We intend to make it as useful as possible in its present format. The Committee, therefore, hopes to keep updating this Book on a regular basis in order to make it more functional.

We solicit comments and suggestions from practitioners and others to improve the usefulness of the Book. In particular, we will welcome the views of the practitioners on enhancement of their knowledgebase.

Your valuable inputs may be sent to [ccbcaf@icai.org](mailto:ccbcaf@icai.org).

We are thankful to CA. Gajendra Maheshwari for preparing the draft of this book on Service Tax: A Practitioner's Perspective.

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