INDIRECT TAX LAWSAMENDMENT MADE BY FINANCE ACT, 2012

A. EXCISE

AMENDMENTS IN THE CENTRAL EXCISE ACT, 1944

(1) Incorporation of definition of "inter-connected undertakings" in section 4 (Effective from May 28th, 2012)

Section 4 deals with the determination of value of excisable goods chargeable to duty on ad valorem basis. It has been amended to incorporate the definition of "inter-connected undertakings" contained in Monopolies and Restrictive Trade Practices Act, 1969 as the latter has been repealed.
In the Central Excise Act, 1944, in section 4,in sub-section (3), in clause (b), dealing with related party, in the Explanation, for clause (i) providing the meaning of inter-connected undertakings, the following clause has been substituted, namely:—

(i) "inter-connected undertakings" means two or more undertakings which are inter- connected with each other in any of the following manners, namely:—

(A) if one owns or controls the other;

(B) where the undertakings are owned by firms, if such firms have one or more common partners;
(C) where the undertakings are owned by bodies corporate,—

(I) if one body corporate manages the other body corporate; or
(II) if one body corporate is a subsidiary of the other body corporate; or
(III) if the bodies corporate are under the same management; or
(IV) if one body corporate exercises control over the other body corporate in any other manner;

(D) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm,—
(I) hold, directly or indirectly, not less than fifty per cent. of the shares, whether preference or equity, of the body corporate; or
(II) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate;

(E) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management;
(F) if the undertakings are owned or controlled by the same person or by the same group;

(G) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the foregoing sub clauses.

(2) Section 9-Offences and Penalties amended (Effective from May 28th, 2012)
As per the existing provisions of section 9(1)(i), any person who commits any of the offences specified therein, will be imprisoned for a term extendible upto seven years and with fine. However, penal provisions are applicable in case of offences relating to any excisable goods wherein the duty leviable thereon **exceeds ₹ 1,00,000**.
The Finance Act, 2012 has amended section 9(1)(i) to the effect that such penal provisions will now apply in the case of an offence relating to any excisable goods, in which the duty leviable thereon under this Act **exceeds thirty lakh of rupees.** Hence, now the offence relating to any excisable goods, in which the duty leviable thereon under this Act **exceeds thirty lakh of rupees**, is punishable with imprisonment for a term which may extend to seven years and with fine .

(3) Section 11A- Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded, amended (Effective from May 28th, 2012)
(i) Before Amendment
Where, during the course of any audit, investigation or verification, it is found that any duty **has not been levied or paid or short-levied or short-paid** or erroneously refunded for the reason mentioned in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) of sub-section (4) but the details relating to the

transactions are available in the specified record, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to fifty per cent of such duty.

After Amendment

Where, during the course of any audit, investigation or verification, it is found that any duty **has not been levied or paid or has been short-levied or short-paid** or erroneously refunded for the reason mentioned in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) of sub-section (4) but the details relating to the transactions are available in the specified record, then in such cases, the Central Excise Officer shall within a period of five years from the relevant date, serve a notice on the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice along with interest under section 11AA and penalty equivalent to fifty per cent of such duty.

(ii) Before Amendment (Effective from May 28th, 2012)

In computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4) or sub-section (5), the period during which there was any stay by an order of the court or tribunal in respect of payment of such duty shall be excluded.

After Amendment

Section 11A has been amended to exclude the period of stay in computing the period of one year or five years, as the case may be, for issuance of show cause notice where **service of notice** is stayed by an order of a court or tribunal.

(4) Section 11AC- Penalty for short-levy or non-levy of duty in certain cases, amended (Effective from May 28th, 2012)

(i) Before Amendment

(1) The amount of penalty for non-levy or short-levy or non-payment or short payment or erroneous refund shall be as follows:—

(a) where any duty of excise **has not been levied or paid or short-levied or short-paid** or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined;

(b) where details of any transaction available in the specified records, reveal that any duty of excise **has not been levied or paid or short-levied or short-paid** or erroneously refunded as referred to in sub-section (5) of section 11A, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to fifty per cent of the duty so determined;

(i) After Amendment

(1) The amount of penalty for non-levy or short-levy or non-payment or short payment or erroneous refund shall be as follows:—

(a) where any duty of excise **has not been levied or paid or has been short-levied or short-paid** or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to the duty so determined;

(b) where details of any transaction available in the specified records, reveal that any duty of excise **has not been levied or paid or has been short- levied or short-paid** or erroneously refunded as referred to in sub- section (5) of section 11A, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty equal to fifty per cent of the duty so determined;

(ii) Section 11AC provides for reduced penalty if the duty along with interest is paid within 30 days of the communication of the order. It has been amended to make available the benefit of reduced penalty only if the reduced penalty is also paid within the specified period of thirty days.

(5) Section 12F-Power of search and seizure, amended (Effective from May 28th, 2012)

Before Amendment
The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure, shall, so far as may be, apply to search and seizure under this section as they apply to search and seizure under that Code.(Sub section-2)
After Amendment

Sub-section (2) of Section 12F of the Central Excise Act has been substituted to provide that the provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Commissioner of Central Excise" were substituted.

Hence from now onwards, where under sub-section (5) of section 165 of the Code of Criminal Procedure, 1973 the police officer submits any copies of record to Magistrate relating to search, now under central excise, copies of record is to be submitted to the Commissioner of Central Excise.

(6) Amendment of the Third Schedule of the Central Excise Act relating to deemed manufacture (Effective from May 28th, 2012)
Section 2(f)(iii) of the Central Excise Act contains provisions relating to deemed manufacture which inter-alia provides that manufacture includes any process, which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,
The Third Schedule of the Central Excise Act contains around 100 goods relating to which any process specified above shall amount to manufacture.

Now, the Third Schedule of the Central Excise Act relating to the deeming of certain processes as amounting to "manufacture" has been amended to include cigarettes. Hence forth, the packing, or repacking in a unit container, labeling or relabeling of containers including the declaration or alteration of Retail Sale Price on it or adoption of any treatment to render cigarettes marketable shall be processes amounting to manufacture.

B. SERVICE TAX

AMENDMENTS IN CHAPTER V AND VA OF THE FINANCE ACT, 1994

(1) Section 65 dealing with definitions ceased to apply (Effective from July 1, 2012)

Section 65 of the Act deals with definitions of all taxable services as well as various other terms relating to services. A Proviso has been newly inserted in section 65 which provides that the provisions of this section will cease to apply with effect from July 1, 2012.

(2) Section 65B newly inserted which deals with definitions (Effective from July 1, 2012)

A new section 65B has been inserted so as to define the following expression. Hence, from now onwards definitions will be dealt by newly inserted section 65B instead of section 65.

In this Chapter, unless the context otherwise requires,—

(1) "actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882.

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent. [Section 3 of the Transfer of Property Act, 1882.]

(2) "advertisement" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person.

(3) "agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.

(4) "agricultural extension" means application of scientific research and knowledge to agricultural practices through farmer education or training.

(5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

(6) "Agricultural Produce Marketing Committee or Board" means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce.

(7) "aircraft" has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act,1934.

"aircraft" **means** any machine which can derive support in the atmosphere from reactions of the air, [**other than** reactions of the air against the earth's surface] and **includes** balloons, whether fixed or free, airships, kites, gliders and flying machines. [Section 2(1) of the Aircraft Act,1934.]

(8) "airport" has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994.

"airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934. [Section 2(b) of the Airports Authority of India Act, 1994.]

(9) "amusement facility" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided.
(10)"Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962.
(11) "approved vocational education course" means,—

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or
(ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment; or
(iii) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.

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

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

"associated enterprise", in relation to another enterprise, means an enterprise--

a)which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise ; or

b)in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise. [Section 92A of the Income-tax Act, 1961.]

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

"authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities.[Section 2(c) of the Foreign Exchange Management Act, 1999.]

(15) "betting or gambling" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring.
(16) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963.

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

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

(19)"Central Transmission Utility" shall have the meaning assigned to it in clause (10) of section 2 of the Electricity Act, 2003.
"Central Transmission Utility" means any Government company which the Central Government may notify under sub-section (1) of section 38 of the Electricity Act,2003.[Section 2(10) of the Electricity Act, 2003.]

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

accompany such documents, goods or articles.
(21)"customs station" shall have the meaning assigned to it in clause (13) of section 2 of the Customs Act, 1962.

"customs station" means any customs port, customs airport or land customs station.[Section 2(13) of the Customs Act, 1962.]

(22) "declared service" means any activity carried out by a person for another person for consideration and declared as such under section 66E.
(23)"electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government.

(24)"entertainment event" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme.

(25)"goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.
(26)"goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.
(27)"India" means,—

(a) the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;

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

(28)"information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment.
(29)"inland waterway" means national waterways as defined in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917.

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

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

(b) a Municipality as referred to in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;

(f) a development board constituted under article 371 of the Constitution; or

(g) a regional council constituted under article 371A of the Constitution.

(32)"metered cab" means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder.
(33)"money" means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument but shall not include any currency that is held for its numismatic value.
Note:

Omission of definition of money from the explanation to section 67 (w.e.f. July 1, 2012)

The definition of money which was earlier provided in Explanation to Section 67 has now been omitted.

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

(35)"non-taxable territory" means the territory which is outside the taxable territory.

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

(37)"person" includes,—
(i) an individual,
(ii) a Hindu undivided family,
(iii) a company,
(iv) a society,

(v) a limited liability partnership,
(vi) a firm,
(vii) an association of persons or body of individuals, whether incorporated or not,
(viii) Government,
(ix) a local authority, or

(x) every artificial juridical person, not falling within any of the preceding sub- clauses.
(38)"port" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act,1963 or in clause (4) of section 3 of the Indian Ports Act, 1908.

"port" includes also any part of a river or channel in which the Indian Ports Act is for the time being in force. [Section 3(4) of the Indian Ports Act, 1908.]

"port" means any major port to which the Major Port Trusts Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act.[Section 2(q) of the Major Port Trusts Act,1963]
(39)"prescribed" means prescribed by rules made under this Chapter.

(40)"process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force.

(41)"renting" **means** allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the

said immovable property and **includes** letting, leasing, licensing or other similar arrangements in respect of immovable property.
(42)"Reserve Bank of India" means the bank established under section 3 of the Reserve Bank of India Act, 1934.

(43)"securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956. "securities" include—
(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
(id) units or any other such instrument issued to the investors under any mutual fund scheme;
(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case maybe;
(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities.

[Section 2(h) of the Securities Contract (Regulation) Act, 1956.]

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but does 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.

(45)"Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.
"Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 of the Special Economic Zones Act, 2005 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone.

[Section 2(za) of the Special Economic Zones Act, 2005.]

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

"stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. [Section 2(40) of the Motor Vehicles Act, 1988.]

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

(48) "State Transmission Utility" shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003.
"State Transmission Utility" means the Board or the Government company specified as such by the State Government under sub-section (1) of section 39 of the Electricity Act, 2003. [Section 2(67) of the Electricity Act, 2003.]

(49) "support services" **means** infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall **include** advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.
(50)"tax" means service tax leviable under the provisions of this Chapter.

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

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

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

"vessel" includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson. [Section 2(z) of the Major Port Trusts Act, 1963.]

(54)"works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.
(55)words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.

(3) Section 66 –The charging section ceased to apply (Effective from July 1, 2012)
Section 66 is the charging section of the Act, which provides that service tax is levied at a specific rate on the value of taxable services referred to in section 65(105) of the Act. A Proviso has been newly inserted in section 66 which provides that the provisions of this section will cease to apply with effect from July 1, 2012.

(4) Section 66A dealing with Import of services rescinded (Effective from July 1, 2012)
Section 66A of the Act deals with levy of service tax on services received from outside India, that is service tax liability in case of import of services. A Proviso has been newly inserted in section 66A which provides that the provisions of this section will cease to apply with effect from July 1, 2012.

(5) Section 66B-The New Charging section (Effective from July 1, 2012)
Section 66B is the new charging section inserted by the Finance Act, 2012. Earlier Section 66 was the charging section which will cease to apply now. Section 66B provides that there shall be levied a service tax at the rate of twelve per cent on the value of all services, except the services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another and collected in the prescribed manner.
Section 66B: New charging section

Section 66C: Determination of place of provision of service

Section 66D: Negative list of services

Section 66E: Declared services
Section 66F: Bundled services
(6) Section 66C, Determination of place of provision of service (Effective from July 1, 2012)
For determination of Place of provision of service, the Place of Provision of Service Rules, 2012 have

been notified vide Notification No. 28/2012-ST dated 20 June, 2012. The Place of Provision of Services Rules, 2012 have been framed to support the negative list approach to taxation of services. The Place of Provision of Services Rules contains principles on the basis of which taxing jurisdiction of a service will be determined.

Provisions of Section 66C

(1) Sub –section 1 of Section 66C empowers the Central Government to make rules to determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided having regard to the nature and description of various services.
(2) Any rule made under sub-section (1) will not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

(7) Introduction of Negative List Approach (Effective from July 1, 2012)
Service tax was introduced in the year 1994 on three services. India adopted the selective approach for taxing services. Under this approach selected services are made liable to tax. Every Budget new services were added taking the toll to more than 120 services from the modest beginning of 3 services in 1994. However, the selective approach lead to grave classification issues and made the law very complex. Considering these increasing complexities, the Government has now decided to adopt the comprehensive approach of taxing services. For this purpose, the Finance Minister in this year's budget has introduced the negative list of services. However, the negative list of services is not merely a revenue garnering measure but it aims to widen the tax base of services and simultaneous simplification of the law.

A Negative List approach to taxation of services has been introduced vide new sections, namely, 66B, 66C, 66D, 66E and 66F in Chapter V of the Finance Act. The services specified in the 'Negative List' (section 66D) will remain outside the tax net. All other services, except those specifically exempted by the exercise of powers under section 93(1) of the Finance Act, 1994, would thus be chargeable to service tax.

Negative List of Services, Section 66D

Section 66D has been newly inserted which specify the following list of services as the negative list: –

(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 not alter the 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 recognised 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 in so far as the consideration is represented by way of interest or discount
(ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.
(o) service of transportation of passengers, with or without accompanied belongings, by –
(i) a stage carriage
(ii) railways in a class other than –
(A) first class or
(B) an airconditioned coach
(iii) metro, monorail or tramway
(iv) inland waterways
(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India and
(vi) metered cabs, 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.

(8) Section 66E newly inserted- Declared Services (Effective from July 1, 2012)

Section 66E has been newly inserted which specify that the nine specific activities or transactions are declared to be covered as 'service'. Such activities includes:–
(a) renting of immovable property

(b) construction of a complex.*

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act

(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods

(g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments
(h) service portion in the execution of a works contract

(i) 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

* Construction of a complex

Service to include:
- 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 the cases where the entire consideration is received after issuance of completion-certificate by the competent authority.

Taxability of Service-The New Equation

Service = Activity + Consideration + Person + Declared Service
–
Negative List
= Taxable Service
–
Exempted Services
+
Place of Provision in Taxable Territory
=
Taxability

(9) Section 65A dealing with Classification of services rescinded (Effective from July 1, 2012)

Section 65A of the Act deals with classification of taxable services. A new sub-section has been inserted in section 65A which provides that the provisions of this section will cease to apply with effect from July 1, 2012.

(10) Section 66F newly inserted-Principles of interpretation of specified descriptions of services or bundled services (Effective from July 1, 2012)

Section 66F has been newly inserted vide Finance Act, 2012 which specify the principles of interpretation of specified descriptions of services or bundled services.

Provisions of Section 66F

- **Reference to main service**

Section 66F specifies that whenever reference to main service is made , it will not include reference to a service which is used for providing main service.[Sub-section (1)]

- **Specific over general**

Where a service is capable of differential treatment for any purpose based on its description, the most specific description will be preferred over a more general description.[Sub-section (2)]
The **taxability of a bundled service** is determined in the following manner, namely:—

(a) Naturally Bundled-Essential character principle

If various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character.
(b) Not Naturally Bundled –Highest liability Principle

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.

{[Sub-section (3)]

Meaning of "Bundled service"

"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.}

(11) Section 67A newly inserted- Date of determination of rate of tax, value of taxable service and rate of exchange (Effective from May 28, 2012)
Section 67A has been newly inserted by the Finance Act, 2012 which specify that the rate of service tax, value of a taxable service and rate of exchange will be the one as in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

(12)Section 68, Payment of service tax (Effective from July 1, 2012)
Before Amendment

Section 68 provides as follows:-

(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed. [Sub-Section (1)]
(2) Notwithstanding anything contained in sub-section (1), in respect of **any taxable service notified** by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service. [Sub-Section (2)]
After Amendment made, NEW REVERSE CHARGE MECHANISM

Sub- section (2) of Section 68 has now been amended providing that for the words "any taxable service notified", the words "such taxable services as may be notified" will be substituted.
Prior to the amendment, in respect of certain notified services service tax is to be paid by the recipient of taxable service. With effect from 1.7.2012, a new scheme of taxation has been brought into effect whereby the liability of payment of service tax will be both on the service provider and the service recipient. Usually such liability is affixed either on the service provider or the service recipient, but in specified services and in specified conditions, such liability will be on both the service provider and the service recipient.

The enabling provision has been provided by insertion of proviso to section 68 in the Finance Act, 2012 as per which Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of Chapter V shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider. Under this clause, the Central government has issued Notification no. 30/2012 dated 20.6.2012 notifying the description of specified services when provided in the manner so specified where part of the service tax has to be paid by the service receiver. The extent to which tax liability has to be discharged by the service receiver has also been specified in the said notification.

(13) Section 72A, newly inserted-Special Audit (Effective from May 28, 2012)

Till 27th May, 2012,Special audit for CENVAT credit purposes under section 14AA was applicable to service tax vide section 83.Section 83 of Finance Act 1994 deals with applicability of provisions of the Central Excise Act,1944 to service tax. However, now a separate section has been inserted in service tax law itself vide enactment of Finance Act, 2012.

A new section 72A has been inserted vide Finance Act, 2012 to introduce provisions relating to **special audit in the service tax law** on the lines of section 14A and section 14AA of the Central Excise Act, 1944.Consequently, section 14AA has been omitted from section 83.

1. Section 72A provides for a special audit to be carried out by a chartered accountant or cost accountant nominated by the Commissioner of Central Excise.
2. The special audit would be ordered where the service tax assessee has
   - failed to declare or determine the value of taxable service correctly or
   - has availed and utilised credit of duty or tax beyond the normal limit 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
   - by means of, collusion or wilful mis-statement or

3. he is having 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 commissioner.
4. The audit report is to be submitted by the chartered accountant or the cost accountant to the Commissioner on completion of the audit .

5. Such audit may be ordered even though such accounts had been audited under any other law .

6. Before initiating proceedings on the basis of the report, a reasonable opportunity is given to the service tax assessee so audited to present his stand.

(14)Section 73 amended- Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded (Effective from May 28, 2012)

Section 73 has now been amended providing for the following-

(1) The one-year time limit for issuance of notice for specified category of offences prescribed under section 73(1) of the Finance Act, 1994, has been increased to eighteen months.

(i) Deemed Notice

A new sub-section (1A) has been inserted in section 73 of the Finance Act, 1994 to prescribe that notwithstanding anything contained in sub-section (1), follow-on notices issued on the **same grounds** need not repeat the grounds but only state the amount of service tax chargeable for the subsequent period. Statement of tax due for the subsequent period, served on the assessee with reference to the earlier demand notice, will be deemed as a notice under section 73(1) of the Finance Act, 1994.

(ii) Prior to 28.05.2012, wherever sub-section 4A applies, sub-section(3) dealing with waiver of notice in case service tax is paid before issuance of notice by CEO and sub-section (4) dealing with non-payment of service tax in case of fraud etc did not apply. However, now in case of sub-section (4A), only sub-section (4) will not apply.

(iii) The time limit for serving the deemed notice for recovery of service tax will be eighteen months.

(15)Section 80 amended- cases in which penalty is not imposed (Effective from May 28, 2012)

A new sub-section has been inserted in section 80 which provides that no penalty would be imposed on

the service tax which is payable as on the 6th day of March, 2012 on service of renting of immovable property with the condition that the service tax and interest are paid in full within period of six months from the 28.05.2012. This waiver of penalty is not subject to anything provided in section 76 or section 77 or section 78.

(16)Section 83 amended- Applicability of provisions of the Central Excise Act, 1944 to service tax (Effective from May 28, 2012)

Section 83 has been amended now whereby following additional provisions of Central Excise Act, 1944 are made applicable to Service Tax.

Section of the CE Act, 1944	Particulars
31	Settlement Commission
32	
32A to 32P	
35EE	Revision by Central Government

Subsequently, reference to Section 14AA is omitted since the said provisions are now contained in newly introduced Section 72A.

(17)Section 85 amended- Appeals to the Commissioner of Central Excise (Appeals) (Effective from May 28, 2012)

Section 85 has been amended now whereby the time limit for filing appeal with Commissioner of Central Excise (Appeals) has been reduced to 2 months from 3 months. The revised time limit would be applicable in respect of decision or order passed on or after 28.05.2012.
Also, the Commissioner of Central Excise (Appeals) is empowered to condone the delay upto the period of 1 month as against the erstwhile period of 3 months.

(18) Section 86 amended-Appeals to the Appellate Tribunal (Effective from May 28, 2012)

Section 86 has been amended to provide for the period of limitation for filing appeal before the Tribunal as **four months** from the date of receipt of order by the Committee of Chief Commissioners or Committee of Commissioners. Earlier, the period of limitation was three months. The extended period of limitation is applicable for all decisions or orders passed after 28.05.2012.
The time limit for filing appeal by the assessee to the Appellate Tribunal still remains the same that is within three months of the date on which the order sought to be appealed against is received by the assessee.

(19) Section 88 rectified- liability under Act to be first charge (Effective from May 28, 2012)

Section 88 provides that "any amount of **duty**, penalty, interest, or any other sum payable by an assessee" subject to certain Acts be the first charge on the property of the assessee. However, now in place of the word "duty", the word "**tax**" has been substituted.

(20)Section 89 amended- Offences and Penalties (Effective from May 28, 2012)

Section 89 was inserted by Finance Act, 2011 to provide for offences and penalties to enable prosecution of specified offences involving service tax evasion.

- As per Section 89(1)(a), provision/receipt of any taxable service without an invoice issued in accordance with the provisions was considered to be an offence.
- The said Section 89(1)(a) has been substituted so as to prescribe "knowingly evasion of payment of service tax" as an offence.
- Thus with the introduction of new clause, the scope of punishable offence has been widened.

(21) Section 93A amended- Power to grant rebate (Effective from May 28, 2012)

Prior to Finance Act 2012, the Central Government was empowered to grant rebate of service tax in case

taxable services are used as input services for the manufacturing or processing **of such goods** or for providing any taxable services. However, now the scope of the rebate has been expanded by allowing rebate of service tax even in case of **removal or export** of such goods.

(22) Section 93B newly inserted- Rules made under section 94 to be made applicable to services other than Taxable services (Effective from May 28, 2012)

After section 93A, a new section 93B has been inserted in the Finance Act, 1994 so as to provide that all the rules made under section 94 and applicable to taxable services are also applicable to services other than taxable services to the extent they are relevant to the determination of any tax liability, refund, credit of service tax or duties paid on inputs and input services or for carrying out the provisions of Chapter V of the Finance Act, 1994.

(23) Section 94 amended- Power to make rules (Effective from May 28, 2012)

Section 94 gives power to central government to make rules. The central Government has been given the power to make rules which inter alia provided for ''the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service''. This power has now been withdrawn. Power to make rules interalia contains the ''date for determination of rate of service tax and the place of provision of taxable service''. Now this power can be exercised under section 66C i.e. determination of place of provision of service. Also, now the Central government has been given power to make rules relating to following matters as well.

(i) provide for the amount to be paid for compounding and the manner of compounding of offences;

(ii) provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in Chapter V of the Central Excise Act, 1944 as made applicable to service tax vide section 83.

(24)Section 95 amended- Power to remove difficulties (Effective from May 28, 2012)

Section 95 empowers the Central Government to issue orders for removing difficulties. Section 95 has been amended now so as to empower the Central Government to issue orders for removal of difficulty in case of sections 65B, 66B,66C,66D,66E and section 66F inserted by Finance Act 2012 in chapter V of the Finance Act, 1994, upto two years from 28.05.2012..Power to issue orders also include the power to give retrospective effect from a date not earlier than 28.05.2012.

(25)Section 96C amended- Application of advance ruling (Effective from May 28, 2012)

Prior to Finance Act, 2012, advance ruling can be sought on the question of

''admissibility of credit of service tax''. However, now it has been amended to provide for

''admissibility of credit of **duty or tax in terms of rules made in this regard''.**

(26)Section 97 newly inserted- Special provision for exemption in certain cases relating to management, etc., of roads (Effective from May 28, 2012)

Management, maintenance or repair service undertaken in relation to roads has been exempted from service tax vide section 97 during the period on and from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive).In case service tax has been wrongly collected then refund will be made of all such service tax. An application for the claim of refund of service tax will be made within a period of six months from 28.05.2012.

(27)Section 98 newly inserted - Special provision for exemption in certain cases relating to management, etc., of non commercial buildings (Effective from May 28, 2012)

Management, maintenance or repair service undertaken in relation to non-commercial Government buildings has been exempted from service tax vide section 98, with effect from 16.06.2005 till July 1,2012. In case service tax has been wrongly collected then refund will be made of all such service tax. An application for the claim of refund of service tax will be made within a period of six months from 28.05.2012.

(28)Amendment of Rule 6 of CENVAT Credit Rules, 2004.

Rule 6(6A) of the Cenvat Credit Rules, 2004 was inserted by Finance Act, 2011 w.e.f. 1st March,2011 to protect the service providers located in the Domestic Tariff Area from the reversal of Cenvat credit, when they supply taxable services under exemption, to the authorized operations of SEZ. The application of sub-rule 6A has been given retrospective effect from 10.02.2006.

(Effective from February 10, 2006 to February 28, 2011)

C. CUSTOMS

AMENDMENTS IN THE CUSTOMS ACT, 1962

(1). Definition of customs airport amended in section 2 (Effective from May 28th, 2012)

The definition of customs airport has been amended to include air freight stations in the definition of "customs airport".

Before Amendment

"customs airport" means any airport appointed under (a) of section 7 to be a customs airport;

After Amendment

"customs airport" means any airport appointed under (a) of section 7 to be a customs airport **and includes a place appointed under clause (aa) of that section to be an air freight station;**

(2) Section 7 – Appointment of customs ports, airports, etc. amended (Effective from May 28th, 2012)

Section 7 has been amended to empower the Central Board of Excise and Customs to appoint air freight stations for unloading of import cargo and loading of export cargo as in the case of Inland Container Depots.

Section 7 of the Customs Act, 1962 inter alia empowers the Board to appoint by notification in the Official Gazette:

(a) inland container depots, for the unloading of imported goods and the loading of export goods or any class of such goods,

After Amendment

(a) inland container depots **or air freight stations**", for the unloading of imported goods and the loading of export goods or any class of such goods,

(3) Insertion of new section 28AAA-Recovery of duties in certain cases (Effective from May 28th, 2012)

Reason for insertion of new section 28AAA-

The provisions of the Customs Act enable recovery of duty not-levied, or short-levied by reason of collusion, or willful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter. Certain cases have been detected relating to utilization of instruments, such as duty credit scrips, where the instrument was obtained by means of collusion or wilful mis-statement or suppression of facts by the person to whom the instrument was issued or his agent or employee and not by the importer who utilized it.

A new section 28AAA has been inserted to provide for recovery of duties, from the person to whom the instrument was issued without prejudice to any action that may be taken against the importer.

After section 28AA of the Customs Act, the section 28AAA has been inserted, providing for:—

Provisions of Section 28AAA

(1) Where an instrument issued to a person has been obtained by him by means of—
(a) collusion; or
(b) wilful misstatement; or
(c) suppression of facts,

- for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules made or notifications issued thereunder,
- by a person other than the person to whom the instrument was issued,
- the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said

instrument was issued:

Provided that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.

Applicability of above provisions (i.e. sub-section 1).––The provisions of sub- section 1 will apply to any utilisation of instrument so obtained by the person referred to in this sub-section on or after May 28th, 2012, whether or not such instrument is issued to him prior to the May 28th, 2012.

(2) **Liability to pay interest (Subsection-2)-**

- Where the duty becomes recoverable in accordance with the provisions of sub-section (1), the person from whom such duty is to be recovered, will, in addition to such duty, is liable to pay interest
- at the **rate** fixed by the Central Government under section 28 AA and
- the amount of such interest will be calculated for the **period** beginning from the date of utilisation of the instrument till the date of recovery of such duty.

(3) **Manner of Recovery of duty and interest (Subsection-3)-**

- For the purposes of recovery under sub-section (2), the proper officer will serve show cause notice on the person to whom the instrument was issued as to why the amount specified in the notice (excluding the interest) should not be recovered from him.
- The Proper Officer will within a period of thirty days from the date of receipt of the notice, and after giving that person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty or interest or both to be recovered from such person.
- The amount of duty or interest or both to be recovered will not be in excess of the amount specified in the notice, and then the proper officer will pass order to recover the amount of duty or interest or both.
- The person to whom the instrument was issued will repay the amount so specified in the notice within a period of thirty days from the date of receipt of the said order, along with the interest due on such amount, whether or not the amount of interest is specified separately.

(4) **Non applicability of section 28AAA(Subsection-4) –** Where an order determining the duty has been passed under section 28, no order to recover that duty will be passed under section 28AAA.

(5) **Manner of recovery if the person fails to repay the amount (Subsection-5)–** Where the person referred to in sub-section (3) fails to repay the amount within the period of thirty days specified therein, the amount will be recovered in the manner laid down in sub-section (1) of section 142(Recovery of sums due to Government).

(4) Amendment in section 28BA- Provisional attachment of property pending adjudication (Effective from May 28th, 2012)

Section 28BA has been amended to make the provisions relating to provisional attachment of property applicable to the new Section 28AAA.

Before Amendment

1. During the pendency of any proceeding under section 28 **or section 28B**, the proper officer may provisionally attach any property belonging to the person on whom notice is served under sub-section (1) of section 28 **or sub-section (2) of section 28B**, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962.

After Amendment

1. During the pendency of any proceeding under section 28 **or section 28AAA or section 28B**, the proper officer may provisionally attach any property belonging to the person on whom notice is served under sub-section (1) of section 28 or **sub- section (3) of section 28AAA or sub-section (2) of section 28B**, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962.

(5) Insertion of new proviso in section 47-Clearance of goods for home consumption.

E-payment of Customs duty (Effective from May 28th, 2012)

Section 47 has been amended to insert a new proviso therein to provide that the Central Government may, by notification in the official gazette, specify the class or classes of importers who will pay customs duty electronically.

(6) Substitution of reference to "section 28AB" with "section 28AA"in section 75A, Interest on drawback (Effective from May 28th, 2012)

Sections 28AA and 28AB of the Customs Act were merged through the provisions of the Finance Act, 2011. However, there was a reference to section 28AB in section 75A.Section 75A has been amended to substitute the reference to "section 28AB" with "section 28AA".

The amendment has also been given retrospective effect from 08.04.2011.

(7) Amendment in section 104-Power to arrest (Effective from May 28th, 2012)

Before Amendment

Section 104 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under the Act shall not be cognizable.(Subsection-4)

After Amendment

- Subsection-4 of Section 104 has been substituted with new subsections to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence relating to-

(a) Prohibited goods; or

(b) Evasion or attempted evasion of duty exceeding fifty lakh rupees, Shall be cognizable. (Subsection-4)

- However, all other offences except provided in sub-section (4) will be non-cognizable. (Subsection-5)

- Also, notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences **under the Act will be bailable.** (Subsection-6)

(8) Enhancement of monetary limits in section 122- Adjudication of confiscations and penalties (Effective from May 28th, 2012)

Section 122 has been amended to enhance the monetary limits for adjudication of cases involving confiscation of goods and imposition of penalty from Rupees two lakh to Rupees five lakh for Deputy/ Assistant Commissioners and from Rs.10,000 to Rs.50,000 for Gazetted officer lower in rank to Assistant/ Deputy Commissioner.

(9) Amendment in section 153-Service of order, decision, etc. (Effective from May 28th, 2012)

Section 153 has been amended to bring 'courier services' within its ambit for the purpose of serving any order/decision/ summons/notice by the Commissioner.

Before Amendment

Section 153, interalia provides that any order or decision passed or any summons or notice issued under this Act, shall be served -

(a) by tendering the order, decision, summons or notice or sending it by **registered post to the person for whom it is intended or to his agent;** or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

After Amendment

Section 153, interalia provides that any order or decision passed or any summons or notice issued under this Act, shall be served -

(a) by tendering the order, decision, summons or notice or sending it by registered post or by such courier as may be approved by the Commissioner of Customs or

(b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

AMENDMENTS IN THE CUSTOMS TARIFF ACT, 1975 (Effective from May 28th, 2012)

(1) Amendment in section 8C- Power of Central Government to impose transitional product specific safeguard duty on imports from the People's Republic of China.

Section 8C empowers the Central Government to levy safeguard duty on imports from Peoples' Republic of China. It has been amended to provide that such duty may continue if the Central Government is of the opinion that

- such articles or goods continue to be imported into India so as to cause or threaten to cause market disruption to domestic industry
- even though the latter has taken measures to adjust to such disruption.

The amendment would align the provisions of the section with the Transitional Product Specific Safeguard Mechanism under Chinese Accession Protocol signed with WTO in 2001.

After Amendment

Extension of period of safeguard duty (Subsection 5 of section 8C)

Central Government may extend the period of imposition of duty from the date of first imposition provided it is of the opinion that:-

(a) such article continues to be imported into India, from the People's Republic of China, in such increased quantities ,so as to cause or threatening to cause market disruption to domestic industry

(b) even though the measures has been taken by the domestic industry towards adjustment to such market disruption or any threat arising thereof

(c) It is necessary that the safeguard duty should continue to be imposed. However, the total period of levy of safeguard duty is restricted to 10 years.

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SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/ CIRCULARS ISSUED BETWEEN 01.07.2011 TO 30.06.2012

A. EXCISE

I. AMENDMENTS IN THE CENVAT CREDIT RULES, 2004

A large number of amendments have been made in the CENVAT Credit Rules, 2004 vide various notifications issued in the period between March and June. Some of these amendments are applicable from 1st April, some from 1st July while others are applicable from the date of issue of notification. Hence, the date of applicability of the CENVAT amendments in the following amendments has not been mentioned with a view not to confuse the students.

1. Definition of capital goods amended [Rule 2(a)]

Amended definition of capital goods (with amendments given in the italics) is as follows:-

Capital goods means :-

(A) the following goods, namely :-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;
(v) refractories and refractory materials;
(vi) tubes and pipes and fittings thereof;
(vii) storage tank, and
(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis, but including dumpers and tippers

used -

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or
(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 vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-

(i) providing an output service of renting of such motor vehicle; or
(ii) transportation of inputs and capital goods used for providing an output service; or
(iii) providing an output service of courier agency.
(C) motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-
(i) transportation of passengers; or
(ii) renting of such motor vehicle; or
(iii) imparting motor driving skills.
(D) components, spares and accessories of motor vehicles which are capital goods for the assessee.
[Notification No. 18/2012-CE (NT) dated 17.03.2012 as amended by Notification No. 28/2012 CE (NT) dated 20.06.2012]

2. Definition of exempted goods under rule 2(d) and proviso to rule 3(1)(i) amended [Notification No. 21/2012 – CE (N.T.) dated 27.03.2012]
The definition of exempted goods under rule 2(d) has been amended to include goods in respect of which exemption under entries at serial numbers 67 and 128* of Notification No. 12/2012-CE dated 17.03.2012 is availed.

Further, **proviso to rule 3(1)(i)** has also been accordingly amended to provide that CENVAT credit of excise duty paid on aforementioned goods shall not be available.

3. New definition of exempted services [Rule 2(e)]
[Notification No. 28/2012-CE (NT) dated 20.06.2012]
The definition of the exempted services has been aligned with the negative list approach of taxation of services. Thus, clause (e) of rule 2 has been substituted with the following clause:-

Exempted service means a-

(1) taxable service which is exempt from the whole of the service tax leviable thereon; or
(2) service, on which no service tax is leviable under section 66B of the Finance Act; or
(3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;
but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.

4. Definition of inputs amended [Rule 2(k)]

Before Amendment

Earlier, the any goods used for -

(a) construction of a building or a civil structure or a part thereof; or
(b) laying of foundation or making of structures for support of capital goods, were **not eligible as inputs**.

However, the aforesaid goods were eligible as inputs when they were used for the provision of any of the following taxable services:-

- Port services
- Other port services
- Airport services
- Construction in respect of commercial or industrial buildings or civil structures
- Construction services in respect of residential complexes
- Works contract services

After Amendment - Notification No. 28/2012-CE (NT) dated 20.06.2012

Now, any goods used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or
(b) laying of foundation or making of structures for support of capital goods, are not eligible as inputs.

However, the aforesaid goods will be eligible as inputs when they are used for the provision of any of the following services:-

(i) Service portion in the execution of a works contract

(ii) Construction service as listed under section 66E(b) of the Act.

5. Definition of input service amended [Rule 2(l)] (a) Exclusion Clause (B)

Before Amendment

Earlier, following services were not eligible as input service if they relate to a motor vehicle which is NOT a capital goods:-

- General insurance business
- Rent-a-cab scheme operator's services
- Service Stations' services
- Supply of tangible goods services

Hence, the aforesaid services were eligible as input services if they were used for providing specified taxable services for which the credit on motor vehicle was available as capital goods.

After Amendment

The exclusion clause (B) has been substituted by clause (B) and (BA) which provide as follows:-

(i) Services provided by way of renting of a motor vehicle where such motor vehicle is not a capital good are excluded from the definition of the input service **[Clause (B)]**

Implication

It implies that the credit of the service tax paid on hiring of the motor vehicles, which are eligible as capital goods, is available.

(ii) Service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle where such motor vehicle is not a capital good are excluded from the definition of the input service **[Clause (BA)]**

Implication

It implies that the credit of the service tax paid on insurance, servicing, repair, maintenance etc. of the motor vehicles which are eligible as capital goods, is available.

Exceptions:-

Credit of the service tax paid on insurance, servicing, repair, maintenance etc. of the motor vehicle, even if not a capital good, is available to the following:-
(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person.

Analysis

It can be inferred that:-

(a) A manufacturer of motor vehicle can avail credit of the service tax paid on the in-transit insurance and on the repair and maintenance of the motor vehicles manufactured by him.
(b) A motor insurance company can avail credit of the service tax paid on the re-insurance and third party insurance and repair and maintenance of the motor vehicles insured /re-insured by them.

(b) Exclusion clause (A)

Before Amendment

Following services would not be eligible as input services if they are used for construction of a building or a civil structure or a part thereof; or laying of foundation or making of structures for support of capital goods:-

- Architect's services
- Port services

- Other port services
- Airport services
- Construction in respect of commercial or industrial buildings or civil structures
- Construction services in respect of residential complexes
- Works contract services

However, if any of the said specified services are used for provision of one or more of these specified services, they shall be eligible as input services.

After Amendment

Following services would not be eligible as input services if they are used for construction or execution of works contract of a building or a civil structure or a part thereof; or laying of foundation or making of structures for support of capital goods:-
(i) Service portion in the execution of a works contract

(ii) Construction service as listed under section 66E(b) of the Act.

However, if works contract services are used for provision of construction services, or vice versa, they shall be eligible as input services.

(c) For the words, "taxable service" in the said defintion, the words "output service" have been substituted.

[Notification No. 18/2012-CE (NT) dated 17.03.2012 as amended by Notification No. 21/2012–CE (NT) dated 27.03.2012 & Notification No. 28/2012-CE (NT) dated 20.06.2012]

6. New definition of output service [Rule 2(p)]
[Notification No. 28/2012-CE (NT) dated 20.06.2012]
The definition of the output service has been aligned with the negative list approach of taxation of services. Thus, clause (p) of rule 2 has been substituted with the following clause:-
Output service means any service provided by a provider of service located in the taxable territory

but shall not include a service,-

(1) specified in the negative list under section 66D of the Finance Act; or

(2) where the whole of service tax is liable to be paid by the recipient of service.

7. Amendments in rule 3 relating to utilization of CENVAT credit

(a) CENVAT credit of the service tax leviable under new charging section 66B available Since, with effect from 01.07.2012, service tax under negative list approach is leviable under new charging section 66B, it has been provided that a manufacturer or producer of final products or a provider of output service is allowed to take CENVAT credit of the service tax leviable under section 66B of the Finance Act [Clause (ixb) to rule 3(1) inserted].

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

(b) Service receiver cannot utilize the CENVAT credit

CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient [Explanation to rule 3(4) inserted].
(c) Amount payable on capital goods removed after being used as capital goods or as scrap or waste [Third proviso to 3(5) and rule 3(5A)]
After Amendment:-
If the capital goods are removed after being used, whether as capital goods or as scrap or waste, the manufacturer/provider of output services shall pay an amount equal to:-

(I) CENVAT Credit taken on the said capital goods reduced by the percentage points** calculated by straight line method for each quarter of a year or part thereof from the date of taking the CEVAT Credit.
Or
(II) Duty leviable on transaction value.

whichever is higher.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

(d) Other changes

(i) In sub-rule (1), for the words, "provider of taxable service", wherever they occur, the word "provider of output service" have been substituted.

(ii) In the proviso to sub-rule (5B), for the words "taxable services" the words "output services" have been substituted.

8. Credit of capital goods and inputs to be allowed to service provider without bringing them into premises subject to due documentation [Second proviso to rule 4(1) and fourth proviso to rule 4(2)(a) inserted]

Before Amendment

Earlier, credit on capital goods and inputs could be taken only after they were brought to the premises of the service provider.

Amendment made by Notification No. 18/2012-CE (NT) dated 17.03.2012

Second proviso to rule 4(1) and fourth proviso to rule 4(2)(a) have been newly inserted to allow credit of capital goods and inputs without bringing them into premises of the provider of output service subject to due documentation regarding their delivery and location.
Second proviso to rule 4(1) stipulates as follows:-

CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.

Fourth proviso to rule 4(2)(a) stipulates as follows:-

CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.

9. Refund of CENVAT credit [Rule 5]

Refund scheme prescribed under rule 5 has been simplified to a larger extent by substituting with a new rule. The new scheme does not require a direct correlation between exports and input services/inputs used in such exports. Duties or taxes paid on any goods or services that qualify as inputs/input services will be entitled to be refunded in the ratio of the export turnover to total turnover.

The scheme is as under:-

A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:
Refund amount is as follows:-
[(Export turnover of goods +Export turnover of service)x Net CENVAT credit] / Total turnover

However, the refund may be claimed under the erstwhile rule 5 till 31.03.2013.

Further, no refund of credit shall be allowed if the manufacturer or provider of output service avails the drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Service Tax Rules, 1994 in respect of such tax.

Value of services

For the purposes of this rule, the value of services shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.

[Notification No. 18/2012-CE (NT) dated 17.03.2012 as amended by Notification No. 28/2012-ST dated 20.06.2012]

In exercise of power conferred by aforesaid rule, CBEC, vide **Notification No. 27/2012- CE (NT) dated 18.06.2012** provides that refund of CENVAT credit shall be allowed subject to the procedure, safeguards, conditions and limitations as specified below, namely:-

A. Safeguards, conditions and limitations

(a) The manufacturer or provider of output service shall submit not more than one claim of refund under this rule for every quarter.

However, a person exporting goods and service simultaneously, may submit two refund claims one in

respect of goods exported and other in respect of the export of services every quarter.
(b) In this notification quarter means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(c) The value of goods cleared for export during the quarter shall be the sum total of all the goods cleared by the exporter for exports during the quarter as per the monthly or quarterly return filed by the claimant.
(d) The total value of goods cleared during the quarter shall be the sum total of

value of all goods cleared by the claimant during the quarter as per the monthly or quarterly return filed by the claimant.

(e) In respect of the services, for the purpose of computation of total turnover, the value of export services shall be determined in accordance with clause (D) of sub-rule (1) of rule 5 of the said rules.

(f) For the value of all services other than export during the quarter, the time of provision of services shall be determined as per the provisions of the Point of Taxation Rules, 2011.

(g) The amount of refund claimed shall not be more than the amount lying in balance at the end of quarter for which refund claim is being made or at the time of filing of the refund claim, whichever is less.

(h) The amount that is claimed as refund under rule 5 of the said rules shall be debited by the claimant from his CENVAT credit account at the time of making the claim.

(i) In case the amount of refund sanctioned is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and amount sanctioned.

B. Procedure for filing the refund claim

1. The manufacturer/provider of output service shall submit a duly signed application in Form A to the jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise (AC/DC) along with the specified documents and enclosures before the expiry of the period specified in section 11B of the Central Excise Act.

2. The refund claim shall be accompanied by the copies of bank realization certificate and a certificate duly signed by the auditor certifying the correctness of refund claimed in respect of export of services.

3. AC/DC, after satisfying himself in respect of the correctness of the claim and the fact that goods cleared for export or services provided have actually been exported, shall allow the refund claim in full or part.

10. Refund of CENVAT credit to service providers providing services taxed on reverse charge basis [New rule 5B inserted]

A provider of service providing services notified under sub-section (2) of section 68 of the Finance Act (services taxed on reverse charge basis) and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

11. Amendments in rule 6

(i) Rate for CENVAT credit reversal for exempted goods and services raised from 5% to 6% [Rule 6(3)]

Before Amendment

Earlier, as per rule 6(3)(i), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, had the option to pay an amount equal to 5% of the value of the exempted goods and exempted services.

Amendment made by Notification No. 18/2012-CE (NT) dated 17.03.2012

Since the rate of excise duty and service tax has been increased from 10% to 12%, the aforesaid rate of CENVAT reversal for exempted goods and services has also been revised from 5% to 6% in rule 6(3)(i).
The rate has been increased to 6% in second proviso to rule 6(3) also.

Reversal of 2% in case of goods transported by rail

However, in case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) shall be an amount equal to 2% of the value of the exempted services [Notification No. 28/2012-ST dated 20.06.2012].

(ii) In case of life insurance or management of ULIPs, obligation to pay every month an amount equal to 20% of the credit availed has been dispensed [Rule 6(3C)]

Earlier, in case of services relating to life insurance or management of ULIPs, provider of output service was obligated to pay every month an amount equal to 20% of the credit availed on inputs and input services in that month.

Now, rule 6(3C) has been omitted vide **Notification No. 18/2012-CE (NT) dated 17.03.2012** and such obligation has been dispensed with.

Accordingly, reference to rule 6(3C) in Explanation-II and Explanation-III has also been omitted.

(iii) Definition of Value under explanation I after rule 6(3D) substituted Value for the purpose of sub-rules (3) and (3A),—

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;

(b) in the case of a taxable service, when the option available under sub-rules (7),(7A),(7B) or (7C) of rule 6 of the Service Tax Rules, 1994, has been availed, shall be the value on which the rate of service tax under section 66B of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or

(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more.

(d) in case of trading of securities, shall be the difference between the sale price and the purchase price of the securities traded or 1% of the purchase price of the securities traded, whichever is more.

(e) shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount

[Notification No. 28/2012-CE (NT) dated 20.06.2012]

(iv) Reference to Notification No. 6/2006-CE in rule 6(6) substituted with Notification No. 12/2012-CE

In clause (iva) and clause (vii), reference to Notification No. 6/2006-CE dated 01.03.2006 has been substituted with Notification No. 12/2012-CE dated 17.03.2012 because the former notification has been superseded by the latter one.

[Notification No. 25/2012-CE (NT) dated 08.05.2012]

(v) New clause (viii) to rule 6(6) inserted

The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable where the excisable goods removed without payment of duty are the supplies made for setting up of solar power generation projects or facilities [Clause (viii) to rule 6(6)].
[Notification No. 25/2012-CE (NT) dated 08.05.2012]

(vi) Sub-rule (6A) substituted with new sub-rules (7) and (8)
Before amendment
At present, the provisions of sub-rules (1), (2), (3) and (4) are not applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone (SEZ) or to a Developer of a Special Economic Zone for their authorised operations.
After Amendment
The aforesaid relaxation has also been extended in case where a service is exported. For the purpose of this rule, **a service provided or agreed to be provided shall not be an exempted service** when:-

(a) the service satisfies the conditions specified under rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency; and
(b) such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision.
[Notification No. 28/2012-CE (NT) dated 20.06.2012]

12. Revised manner of distribution of credit by input service distributor [Rule 7]

Rule 7 has been substituted with a new rule which provides as follows:-

The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:—
(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;
(c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and

(d) credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.
[Notification No. 18/2012-CE (NT) dated 17.03.2012 as amended by Notification No. 28/2012-CE (NT) dated 20.06.2012]

13. Credit availment allowed on the tax payment challan in case of payment of service tax by ALL service receivers on reverse charge [Rule 9(1)(e)]
Before Amendment

Earlier rule 9(1)(e) provided that the CENVAT credit may be taken by the manufacturer or the provider of output service or input service distributor on the basis of a challan evidencing payment of service tax by

the person liable to pay service tax under sub- clauses (iii), (iv), (v) and (vii) of rule 2(1)(d) of the Service Tax Rules, 1994. Hence, earlier, NOT All service receivers on reverse charge were included under this clause.

Amendment made by Notification No. 18/2012-CE (NT) dated 17.03.2012

Rule 9(1)(e) has been 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.

Now, it reads under:-

CENVAT credit may be taken by the manufacturer or the provider of output service or input service distributor on the basis of a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax.

14. Transfer of CENVAT credit of SAD from one factory to another [New rule 10Ainserted] [Notification No. 18/2012-CE (NT) dated 17.03.2012]

A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961, may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—

(i) making an entry for such transfer in the documents maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i), and such recipient premises may take CENVAT credit on the basis of the transfer challan.

However, nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of certain specified notifications.

The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.

15. Certain procedure and facilities for LTU not applicable to unit availing exemption under Notification No. 01/2010-CE [Rule 12A] [Notification No. 18/2012-CE (NT) dated 17.03.2012]

Rule 12A(1) stipulates that a Large Tax Payer can transfer inputs and capital goods from any of his registered premises to his other registered premises for further use in the manufacture or production of final products in recipient premises. Third proviso to rule 12A(1) has been amended to provide that if the recipient premises is availing benefit of Notification No.01/2010-CE dated 06.02.2010, it will not get the benefit mentioned in this sub-rule.

Rule 12A(4) stipulates that a Large Tax Payer can transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises. Fourth proviso to rule 12A(4) has been amended to provide that if the recipient premises is availing benefit of Notification No.01/2010-CE dated 06.02.2010, it will not get the benefit mentioned in this sub-rule.

16. Rule 14 amended

Before Amendment

Earlier, interest under rule 14 was payable in case where the CENVAT credit has been taken **OR** utilized wrongly or has been erroneously refunded.

After Amendment

The Supreme Court, in case of UOI v. Ind-Swift Laboratories Ltd. 2011 (265) E.L.T. 3 (S.C.) held that if the provision of rule 14 is read as a whole, there is no reason to read the word "OR" in between the expressions 'taken or utilized wrongly or has been erroneously refunded' as the word "AND". On the happening of any of

the three circumstances, such credit becomes recoverable along with interest. However, levying interest on wrong CENVAT credit taken, even though not utilized, seem to be unjustified.

Consequently, rule 14 has been amended to provide that interest is payable in either of the following two cases:-

(i) CENVAT credit has been taken **AND** utilized wrongly or
(ii) CENVAT credit has been erroneously refunded.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

17. Rule 12 amended

In rule 12, for the words "notwithstanding anything contained in these rules", the words "notwithstanding anything contained in these rules but subject to proviso to rule 3(1)(i)" has been substituted.

II. AMENDMENTS IN THE CENTRAL EXCISE RULES, 2002

1. Option to authorize job-worker to pay duty in case of readymade garments and made-up articles of textiles withdrawn [Rule 4(1A)] [Notification No. 19/2011 CE (NT) dated 28.07.2011]

In the garment and made up industry, goods are being manufactured from several job- workers. The person getting the goods manufactured on his behalf may or may not, himself, possess any manufacturing facility.

Central Excise Rules were amended to incorporate sub-rule (1A) in rule 4 vide Notification No. 4/2011 CE (NT) dated 01.03.2011 to prescribe that in case of readymade garments and made-up articles of textiles falling under Chapter 61 or 62 or 63 of the First Schedule to the Tariff Act, the liability to pay duty and comply with central excise procedures would be on the person on whose behalf the goods are manufactured by job- workers. Alternatively, an option was given to merchant manufacturer to authorize the job-worker to obtain registration and comply with all formalities of Central Excise including payment of duty.

Sub-rule (1A) has been further amended to withdraw the option available to merchant manufacturer to authorize the job-worker to pay duty and comply with all the procedures. Therefore, now only the merchant manufacturer can pay duty in such cases.

In a case where any merchant manufacturer has already authorized its job-worker to pay the duty under the provisions of sub-rule (1A) as it stood prior to the publication of this notification, he will have to obtain registration and comply with other related provisions within a period of 30 days from 28.07.2011.

2. Rule 12AA of the CENVAT Credit Rules, 2004 renumbered as 12AAA and rule 12CC of the Central Excise Rules, 2002 renumbered as 12CCC [Notification No. 3& 4/2012-CE (NT) both dated 12.02.2012]

Rule 12AA of the CENVAT Credit Rules, 2004 empowering Central Government to impose restriction on utilization of CENVAT credit in certain type of case has been substituted with the new rule 12AAA. The provisions of the erstwhile rule 12AA and new rule 12AAA are same.

Further, rule 12CC of the Central Excise Rules, 2002 empowering Central Government to impose restriction in certain type of case has been substituted with the new rule 12CCC. The provisions of the erstwhile rule 12CC and new rule 12CCC are same.

Facilities to be withdrawn and restrictions to be imposed in certain types of cases for manufacturer, first stage and second stage dealer or exporter

Consequently, Notification No. 32/2006-CE (NT) dated 30.12.2006 issued under erstwhile rules has also been superseded by **Notification No. 5/2012-CE (NT) dated 12.03.2012**.

3. Option available to job-worker to pay duty and comply with all the procedures in case of article of jewellery or other articles of precious metals withdrawn [Rule 12AA of the Central Excise Rules, 2002] [Notification No. 8/2012-CE (NT) dated 17.03.2012]

As per rule 12AA of the Central Excise Rules, 2002, in case of article of jewellery or other articles of precious metals falling under Heading 7113 or 7114 manufactured on job-work basis, merchant manufacturer would obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee. However, proviso to sub-rule (1) to rule 12AA provided an option available to job-worker to pay duty and comply with all the procedures.

However, now proviso to sub-rule (1) to rule 12AA has been omitted to withdraw the option available to job-worker to pay duty and comply with all the procedures. Therefore, now only the merchant manufacturer can pay duty in such cases.

Further, explanation 2 to rule 12AA explaining the meaning of article of jewellery has also been omitted.

4. Explanation to rule 11 amended [Notification No.22/2012-CE (N.T.) dated 30.03.2012]

In explanation to rule 11, "CENVAT Credit Rules, 2002" has been substituted with "CENVAT Credit Rules, 2004".

5. Documents to be produced on demand under rule 22(3) to Cost Accountant/ Chartered Accountant as nominated under section 14A/14AA also [Notification No.22/2012-CE (N.T.) dated 30.03.2012]

Before Amendment

Earlier under rule 22(3), assessee, first stage dealer and second stage dealer were required to produce, on demand, the records maintained by him in respect of accounting of transactions, all financial statements, etc. as required under rule 22(2), cost audit reports and income tax audit reports to the following persons:-

(i) Officer empowered under sub-rule (1) or

(ii) Audit party deputed by the Commissioner/Comptroller and Auditor General of India for the scrutiny by the officer/audit party.

After Amendment

Now, the said documents need to be produced on demand, to the following persons:

(i) Officer empowered under sub-rule (1) or

(ii) Audit party deputed by the Commissioner/Comptroller and Auditor General of India

(iii) Cost Accountant/ Chartered Accountant as nominated under section 14A/14AA of the Act for the scrutiny by the officer/audit party/cost accountant/chartered accountant **within the time-limit specified by them**.

6. Fourth proviso to rule 12(1) amended [Notification No. 23/2012-CE (N.T.) dated 18.04.2012]

Before Amendment

Where an assessee is availing the exemption under Notification No. 1/2011-CE dated 01.03.2011 and does not manufacture any other excisable goods, he shall file a **quarterly return** in the specified form, of production and removal of goods and other relevant particulars, within 10 days after the close of the quarter to which the return relates [Fourth proviso to rule 12(1)].

After Amendment

Fourth proviso to rule 12(1) has been amended to extend the aforesaid relaxation of filing the quarterly return to an assessee availing exemption in respect of goods falling under Sl.No.67, 128, 199(I) and 200(I) [mentioned below], of Notification No. 12/2012-CE dated 17.03.2012.

S. No.	Particulars
67	Coal, briquettes, ovoids and similar solid fuels manufactured from coal
128	All goods mentioned in Chapter 31 (fertilizers), other than those which are clearly not to be used as fertilisers
199(I)	Articles of jewellery under heading 7113
200(I)	Articles of goldsmiths' or silversmiths' wares of precious metal or of metal clad with precious metal, bearing a brand name under heading 7114

7. E-Filing of Excise Returns and Statements mandatory for all assesses

[Notification No. 21 & 22/2011 CE (NT) both dated 14.09.2011]

Central Excise Rules, 2002 have been amended to provide that the returns and statements prescribed under rule 12 will have to be filed electronically by all the assessees irrespective of the duty paid in the preceding year. Monthly Return for production and removal of goods (ER-1), Quarterly Return (ER-3), Annual Financial Information Statement (ER-4) are some of the returns and statements prescribed under Rule 12.

Assessees availing exemption under Notification No. 49/2003 CE dated the 10.06.2003 or Notification No. 50/2003 CE dated 10.06.2003 have been exempted from the requirement of e-filing of the returns prescribed under rule 12. Notification No. 49/2003 CE dated 10.06.2003 exempts certain goods when cleared from a unit in the State of Uttaranchal or Himachal Pradesh. Notification No. 50/2003 CE dated 10.06.2003 exempts certain goods when cleared from a unit located in the Industrial Growth Centre or Industrial Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial Area or Commercial Estate or Scheme Area
Hundred per cent Export Oriented Undertakings will also be required to submit the monthly excise return (ER-2) electronically irrespective of the duty paid in the preceding year.

Similar amendment has been made in CENVAT Credit Rules, 2004 to the effect that the assessees will now have to file the annual declaration in respect of principal inputs (ER-5) and the monthly return of information relating to principal inputs (ER-6) electronically irrespective of the duty paid in the preceding year.

The amendments have become effective from 01.10.2011.

III. OTHER AMENDMENTS

1. CBEC notifies new Form ER 1 and ER-3

The Central Board of Excise and Customs has notified new Form ER-1 and Form ER-3.

Form ER-1 is the **monthly return** for production and removal of goods and other relevant particulars and CENVAT credit.

Form ER-3 is the **quarterly return** for production and removal of goods and other relevant particulars and CENVAT credit, by an assessee eligible to avail of the exemption under a notification based on the value of clearances in a financial year.

The new forms have been effective from 1st October, 2011. SSI unit is required to file return in Form ER-3 for the quarter beginning from the 1st October, 2011 and ending with the 31st December, 2011.

[Notification No. 16/2011- CE (NT) dated 18.07.2011 as amended by Notification No. 20/2011 CE (NT) dated 13.09.2011 & Notification No. 31/2011-CE (NT) dated 30.12.2011 and Notification No. 12/2012-CE (NT) dated 17.03.2012]

2. Application for registering a new factory after opting as large taxpayer to be made to Assistant Commissioner /Deputy Commissioner in place of Chief Commissioner

[Notification No. 17/2011- CE (NT) dated 18.07.2011]

Notification No. 20/2006 - CE (N.T.) dated 30.09.2006 specifies the conditions to be satisfied and procedures to be followed by a person to be eligible to opt as large taxpayer. One of the conditions laid down by the said notification provided that where a new factory or service provider, input credit distributor or first or second stage dealer becomes liable to be registered, after opting as large taxpayer, the application for such new registration ought to be made before the Chief Commissioner of Central Excise, Large Taxpayer Unit.

The said condition has been amended so as to enable the submission of applications of such new registrations before the Assistant Commissioner /Deputy Commissioner of Central Excise, Large Taxpayer Unit, in case of registration under the Central Excise Act, 1944 and the Superintendent, Large Taxpayer Unit, in case of registration under the service tax, as the case may be.

3. Export procedures for Nepal amended

[Notifications Nos. 24-29 CE (NT) all dated 05.12.2011 and Notification No. 02/2012- CE(NT) dated 22.02.2012]

With effect from 01.03.2012, the procedures prescribed for export under claim for rebate vide Notification No. 19/2004 CE (NT) dated 06.09.2004 and export without payment of duty under bond vide Notifications Nos. 42 to 44/2001 CE (NT) all dated 26.06.2001 would apply to Nepal as well. This has been done in view of the revised treaty between India and Nepal. CBEC has issued Notifications Nos. 24-29 CE (NT) all dated 05.12.2011 to give effect to this amendment.

As per the earlier provisions, procedures prescribed for export under claim for rebate vide Notification No. 19/2004 CE (NT) dated 06.09.2004 and export without payment of duty under bond vide Notifications Nos. 42 to 44/2001 CE (NT) all dated 26.06.2001 applied to countries other than Nepal and Bhutan. For Nepal and Bhutan separate procedures were prescribed for export under claim for rebate vide Notification No.
20/2004 CE (NT) dated 06.09.2004 and export without payment of duty under bond vide
Notification No. 45/2001 CE (NT) dated 26.06.2001.

4. Section 11AB substituted with section 11AA

Finance Act, 2011 had substituted erstwhile sections 11AA and 11AB with a new section 11AA. Hence, reference to erstwhile section 11AB at the following places has been replaced with section 11AA:-

S.No.	Rules/Notification No.s	
1.	Central Excise Rules, 2002	Rule 8(3)
		Rule 8A(3)
		Rule 12BB
		Rule 7(4)
2.	Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001	Rule 6
3.	Notification No. 45/2001-CE (NT) dated 26.06.2001	
4.	Notification No. 31/2007-CE (NT) dated 02.08.2007	
5.	Notification No. 42/2001-CE (NT) dated 26.06.2001	

[Notification No. 8,13,14,15 & 16/2012-CE (NT) all dated 17.03.2012 & Notification No.22/2012-CE (N.T.) dated 30.03.2012]

5. In respect of goods received at concessional rate of duty, instead of monthly return quarterly return needs to be filed [Notification No. 13/2012-CE (NT) dated 17.03.2012]

Rule 5 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has been amended to, inter alia, provide that the manufacturer, receiving subject goods, shall submit a quarterly return instead of a monthly return.

B. SERVICE TAX

I. NEW EXEMPTIONS/AMENDMENTS IN/WITHDRAWAL OF EXISTING EXEMPTIONS

1. Rate of service tax restored to 12%

As per section 66, the charging section under earlier regime, rate of service tax was 12% of the value of taxable services. However, the rate of service tax was reduced to 10% vide Notification No. 8/2009 ST dated 24.02.2009.

With effect from 01.04.2012, **Notification No. 02/2012-ST dated 17.03.2012** rescinded the said notification and the rate of service tax was restored to 12% for the period between 01.04.2012 to 30.06.2012.

With effect from 01.07.2012, new charging section, section 66B has come into effect. The rate of service tax is 12% as per the new charging section also.

2. Rescission of the earlier Notifications

With the introduction of negative list approach of taxation of services, a large number of earlier notifications which were either not in line with the new provisions or which have been subsumed in mega exemption or abatement notification or a new notification has been issued, have been rescinded vide **Notification No. 34/2012-ST dated 20.06.2012.**

3. Refund of service tax paid on the services used in the export of the goods

With the introduction of the negative list approach with effect from July 1, 2012, notifications granting exemption to the exporters of goods have also been suitably amended as under:

A. Notification No. 18/2009-ST dated 07.07.2009 rescinded-Refund of service tax where service tax is paid by exporter under reverse charge mechanism

Notification No. 18/2009-ST dated 07.07.2009, providing exemption to the Goods Transport Agency service and Foreign Commission Agent service received by exporters and used in export of goods, has been rescinded by **Notification No. 31/2012 dated 20.06.2012**. Further,**Notification No.42/2012-ST dated 29.06.2012** has been issued.

The exemption which was earlier available to both goods transport agency service and the foreign commission agent service used for export of goods under the same Notification (NN 18/2009) has now been provided under two separate notifications. NN 31/2012 provides exemption to goods transport agency service and NN 42/2012 provides exemption to foreign commission agent service.

B. Notification No. 17/2009-ST dated 07.07.2009 rescinded-Rebate of service tax paid on specified services used in the export of goods

With effect from 03.01.2012, the old procedure for grant of refund prescribed vide Notification 17/2009-ST dated 07.07.2009 was dispensed with and a new scheme for refund of the service tax paid on the services received by an exporter and used for export of goods was prescribed vide **Notification No. 52/2011 dated 30.12.2011**.

Under the simplified scheme, the exporters were provided with an option to claim refund electronically through ICES scheme. Otherwise, they could claim refund on the basis of documents. Refund, however, continued to be restricted to specified 18 taxable services as before.
With the advent of the negative list approach and section 65 ceasing to exist, Notification No. 52/2011 dated 30.12.2011 has also been superseded vide **Notification No. 41/2012 dated 29.06.2012** thereby omitting the reference to various sub-clauses of erstwhile section 65(105). The provisions of new rebate scheme, effective from 01.07.2012, have been enumerated below:-

The rebate shall be granted by way of refund of service tax paid on the specified services.

Manner of claiming rebate

The exporters now have a choice to opt either of the following options:

A. Electronic rebate through ICES system, which is based on the notified 'schedule of rates' on the lines of duty drawback, or

B. Rebate on the basis of documents, by approaching the Central Excise/Service Tax formations.

4. Small service provider's (SSP) exemption

Before Amendment

Earlier, Notification No. 6/2005-ST dated 01.03.2005 granted exemption to a small service provider who provided taxable services not exceeding ₹ 10 lakh in the preceding financial year.

Hence, where the aggregate value of taxable services provided by a service provider did not exceed ₹10 lakhs in the previous financial year, the concerned service provider was not required to pay service tax upto aggregate value not exceeding ₹ 10 lakh in the current financial year.

After Amendment- Notification No. 33/2012 – ST dated 20.06.2012

With effect from 01.07.2012, the aforesaid notification has been rescinded and a new notification grating exemption to small service providers has been issued to align it with the concept of negative list approach.

Central Government has exempted the taxable services of aggregate value not exceeding ₹10 lakh in any financial year from the whole of the service tax leviable thereon under section 66B of the Finance Act, 1994 in case the aggregate value of taxable services rendered by the service provider from one or more premises, does not exceed ₹ 10 lakh in the preceding financial year.

5. MEGA EXEMPTION NOTIFICATION

With effect from 01.07.2012, **Notification No. 25/2012-ST dated 20.06.2012** grants exemption from service tax to the following taxable services:-

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

2.Health care services by a clinical establishment, an authorized 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 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 ₹10 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 ₹10 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,-

(a)auxiliary educational services; or

(b)renting of immovable property.

10. Services provided to a recognized 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 recognized sports body.

11. Services by way of sponsorship of sporting events organised,-

(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;

(c)by Central Civil Services Cultural and Sports Board;

(d)as part of national games, by Indian Olympic Association; or

(e)under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958;
(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
(d)canal, dam or other irrigation works;
(e)pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

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

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
(b)a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c)a building owned by an entity registered under section 12AA of the Income tax Act, 1961 and meant predominantly for religious use by general public;

(d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a)an airport, port or railways, including monorail or metro;

(b)a single residential unit otherwise than as a part of a residential complex;

(c) low- cost houses up to a carpet area of 60 square 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) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of section 13(1) of the Indian Copyright Act, 1957, relating to original literary, dramatic, musical, artistic works or cinematograph films;

16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -

(a)petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985;

(b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
(c)defence or military equipments;
(d)postal mail or mail bags;
(e)household effects;

(f)newspaper or magazines registered with the Registrar of Newspapers;
(g)railway equipments or materials;
(h)agricultural produce;

(i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or

(j)chemical fertilizer and oilcakes;

21. Services provided by a goods transport agency by way of transportation of –
(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. Services by way of giving on hire -

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
(b) to a goods transport agency, a means of transportation of goods;

23. Transport of passengers, with or without accompanied belongings, by -

(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
(b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c)ropeway, cable car or aerial tramway;

24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

25. Services provided to Government, a local authority or a governmental authority by way of -
(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

(b)repair or maintenance of a vessel or an aircraft;

26. Services of general insurance business provided under following schemes –
(a)Hut Insurance Scheme;
(b)Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
(c) Scheme for Insurance of Tribals;
(d) Janata Personal Accident Policy and Gramin Accident Policy;
(e) Group Personal Accident Policy for Self-Employed Women;
(f) Agricultural Pumpset and Failed Well Insurance;
(g) premia collected on export credit insurance;
(h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;

(i)Jan Arogya Bima Policy;

(j)National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
(k)Pilot Scheme on Seed Crop Insurance;
(l)Central Sector Scheme on Cattle Insurance;
(m) Universal Health Insurance Scheme;
(n)Rashtriya Swasthya Bima Yojana; or

(o)Coconut Palm Insurance Scheme;

27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

(a) the total turnover had not exceeded fifty lakh rupees during the preceeding financial year; and

(b) a period of three years has not been elapsed from the date of entering into an agreement as an incubate.

28. Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

(a)as a trade union;

(b) for the provision of carrying out any activity which is exempt from the levy of service tax; or

(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

29. Services by the following persons in respective capacities –

(a)sub-broker or an authorised person to a stock broker;

(b)authorised person to a member of a commodity exchange;

(c)mutual fund agent to a mutual fund or asset management company;

(d)distributor to a mutual fund or asset management company;

(e)selling or marketing agent of lottery tickets to a distributer or a selling agent;

(f)selling agent or a distributer of SIM cards or recharge coupon vouchers;

(g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt.

30. Carrying out an intermediate production process as job work in relation to –

(a)agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985;

(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 ₹ 150 lakh in a financial year subject to the condition that such aggregate value had not exceeded ₹ 150 lakh rupees during the preceding financial year.

31. Services by an organizer to any person in respect of a business exhibition held outside India.

32. Services by way of making telephone calls from –

(a)departmentally run public telephone;

(b)guaranteed public telephone operating only for local calls; or

(c)free telephone at airport and hospital where no bills are being issued.

33. Services by way of slaughtering of bovine animals.

34. Services received from a provider of service located in a non- taxable territory by –

(a)Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;

(b)an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

(c)a person located in a non-taxable territory.

35. Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948.

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 243W of the Constitution.

6. Abatements in respect of various taxable services [Notification No. 26/2012-ST dated 20.06.2012]

Earlier, the abatement in respect of various taxable services was provided vide Notification No. 01/2006-ST dated 01.03.2006, Notification No. 09/2010-ST dated 27.02.2010 and Notification No. 06/2012-ST dated 17.03.2012. The said notifications have been rescinded.

With effect from 01.07.2012, following taxable services are eligible for abatement from the gross amount in the following manner:-

S.No.	Description of taxable service	Percentage of abatement	Conditions
1	Services in relation to financial leasing including hire purchase	90	Nil.
2	Transport of goods by rail	70	Nil.
3	Transport of passengers, with or without accompanied belongings by rail.	70	Nil.
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises.	30	CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
5	Transport of passengers by air, with or without accompanied belongings.	60	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	40	Same as above.

7	Services of goods transport agency in relation to transportation of goods.	75	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
8	Services provided in relation to chit	30	Same as above.
9	Renting of any motor vehicle designed to carry passengers	60	Same as above.
10	Transport of goods in a vessel	50	Same as above.
11	Services by a tour operator in relation to,- (i) a package tour	75	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The bill issued for this purpose indicates that it is inclusive of charges for such a tour.
	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour.	90	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
			(ii)The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challanissued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.

	(iii) any services other than specified at (i) and (ii) above.	60	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.
12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority.	75	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The value of land is included in the amount charged from the service receiver.

7. Deduction of Research and development cess payable on import of technology allowed from service tax subject to specified conditions being fulfilled [Notification No.14/2012 – ST dated 17.03.2012]

With effect from 01.07.2012, the amount of Research and development cess payable shall be allowed as a deduction from the service tax payable on the taxable service involving the import of technology.

Conditions to be fulfilled:-

(a) The Research & Development Cess is paid at the time or before payment for the service subject to maximum of 6 months period from the date of invoice *.

***In case of associated enterprises, the date of credit in the books of account.

(b) Necessary records will have to be maintained so as to establish a linkage between the invoice or the credit entry (as the case may be) and the cess payment challan.

8. Exemption to services for use of foreign Diplomatic Mission/consular post in India or family members of diplomatic agents or career consular officers posted therein

Before Amendment

Earlier, exemption to services provided for the official use of a foreign diplomatic mission or consular post in India, or for personal use/for the use of the family members of diplomatic agents or career consular officers posted therein was granted by Notification No. 33 & 34/2007-ST both dated 23-05-2007. With the introduction of the negative list, these notifications have been rescinded.

After Amendment

With effect from 01.07.2012, the exemption to the aforesaid persons is granted by **Notification No. 27/2012-ST dated 20.06.2012.** The provisions of the erstwhile and the new notification are largely the same. As per the new notification, following services are exempt from service tax:-

(i) Exemption on services provided to foreign diplomatic missions or consular posts in India for their **official use.**

(ii) Exemption on services provided for **personal use** or for the use of the family members of diplomatic agents or career consular officers posted therein.

The Notification also prescribes the procedure for availing the said exemption.

9. Property tax allowed as deduction from the gross amount charged for renting of immovable property services

Earlier, in case of taxable service of renting of an immovable property, the taxes on such property, namely property tax levied and collected by local bodies were allowed as deduction from the gross amount charged for renting of such immovable property vide Notification No. 24/2007 dated 22.05.2007.
The said notification had a reference to the erstwhile section 65(105)(zzzz) which has now ceased to exist. Consequently, with effect from 01.07.2012, Notification No. 24/2007 has been rescinded and the exemption in respect of property tax from gross amount charged for renting of the immovable property service has been granted **vide Notification No. 29/2012 dated 20.06.2012**. The provisions of the erstwhile and the new notification are largely the same.

10. Exemption to services provided by Technology Business Incubator / Science and Technology Entrepreneurship Park

Earlier, exemption to all taxable services provided or to be provided by Technology Business Incubators (TBI)/Science and Technology Entrepreneurship Parks (STEP) recognized by National Science and Technology Entrepreneurship Board (NSTEBD) of the Department of Science & Technology was provided vide Notification No. 9/2007 dated 01.03.2007.
Since, the said notification has reference to the erstwhile charging section 66 which has now ceased to exist, with effect from 01.07.2012; Notification No. 9/2007 has been rescinded. **Notification No. 32/2012 dated 20.06.2012** has been issued to grant exemption to TBI and STEP. The provisions of the erstwhile and the new notification are largely the same.

11. Exemption to services received by a developer or units of a Special Economic Zone

Exemption to services received by a developer or units of a special economic zone, earlier provided vide Notification No. 17/2011 ST dated 01.03.2011, has now been granted vide **Notification No. 40/2012-ST dated 20.06.2012.** The said notification provides as follows:-

(A) Eligibility for exemption

The taxable services received by any of the following are eligible for exemption under this notification:-
- a unit located in a Special Economic Zone (hereinafter referred to as SEZ)
- developer of SEZ

and used for the authorized operations

(B) Refund route/ upfront exemption

(i) Option not to pay service tax ab-intio in case the specified services wholly consumed within the SEZ

Where the services are received in SEZ and used in authorized operations are wholly consumed within SEZ, the person liable to pay service tax has the option not to pay the service tax. Hence, under this option, instead of the Unit or Developer claiming exemption by way of refund, service tax may not be paid ab intio.

(ii) Refund route available where the specified services are not wholly consumed within the SEZ

Where the specified services received and used for authorised operations are partially consumed within the SEZ and partially outside SEZ, i.e. shared services, the exemption shall be provided only by way of refund of service tax paid on the specified services received for the authorised operations in a SEZ. Hence, the option of not paying the service tax ab-intio is not available here.

(C) Restricted amount of refund in case the specified services are not wholly consumed within the SEZ

Where the specified services received by Unit or Developer, are not wholly consumed within SEZ, i.e., shared between authorised operations in SEZ Unit and Domestic Tariff Area (DTA) Unit, maximum refund shall be restricted to the extent of the ratio of export turnover of goods and services multiplied by the

service tax paid on services other than wholly consumed services to the total turnover for the given period to which the claim relates.

Maximum Refund = (ST- ET) / TT

Where
ST stands for service tax paid on services other than wholly consumed services (used for both SEZ and DTA Unit)

ET stands for Export turnover of goods and services of SEZ Unit/Developer

TT stands for Total turnover for the period
The Notification also prescribes the procedure for availing the said exemption.

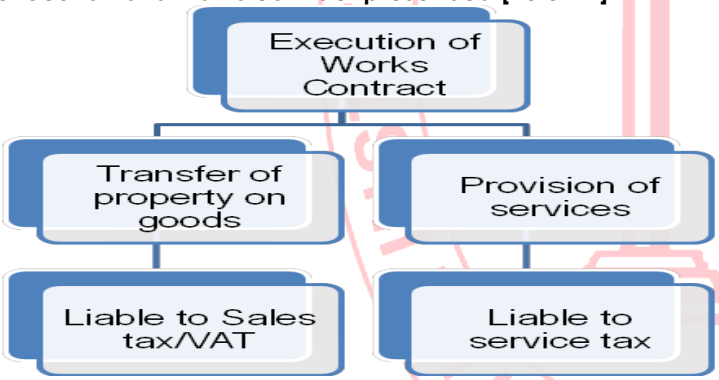
B. COMPOSITION SCHEME UNDER WORKS CONTRACT DISPENSED WITH

With effect from 01.07.2012, optional composition scheme under works contract has been dispensed with and consequently, notification issuing Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 has been rescinded vide **Notification No. 35/2012-ST dated 20.06.2012**.

C. AMENDMENTS IN THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

The amendments in the Service Tax (Determination of Value) Rules, 2006 have been made vide **Notification No. 24/2012 dated 06.06.2012** effective from 01.07.2012.

1. More comprehensive manner of determination of value of service portion in the execution of a works contract prescribed [Rule 2A]



Works contract is a contract for the provision of service as well as supply of materials. As decided by Apex Court in BSNL v. UOI 2006 (2) S.T.R. 161 (S.C.), a works contract can be segregated into a contract of sale of goods and contract of provision of service. With a view to bring certainty and simplicity, the manner of determining the value of service portion in works contracts was provided in the erstwhile rule 2A of the Service Tax (Determination of Value) Rules, 2006. In order to align this rule with the new system of taxation of services based on the negative list, the erstwhile rule 2A has been replaced by a new rule 2A which provides as follows:-.
Subject to the provisions of section 67, the value of service portion in the execution of a works contract shall be determined in the following manner, namely:-

A. Determination of value on the basis of value of transfer of property in goods transferred, adopted for State VAT purposes
Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Particulars	Amount (₹)
Gross amount charged for the works contract	xxxx

Less: Value of transfer of property in goods transferred, computed for State VAT purpose**	xxxx
Less: VAT/Sales tax, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract.	xxxx
Value of the works contract service	xxxx

****Note: Value of transfer of property in goods involved in the execution of the said works contract in case VAT/sales tax is paid/payable on their actual value**

Where VAT/sales tax has been paid/payable on the actual value of property in goods transferred in the execution of the works contract (and not using standard rate of deduction) then, such value adopted for the purposes of payment of VAT/sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

Inclusions

Value of works contract service shall **include** –
(i) labour charges for execution of the works;
(ii) amount paid to a sub-contractor for labour and services;
(iii) charges for planning, designing and architect's fees;
(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services; (vii) other similar expenses relatable to supply of labour and services; and
(viii) profit earned by the service provider relatable to supply of labour and services.

B. Simplified scheme for determining the value of service portion in a works contract
Where the value **has not been determined** as per the aforementioned method, the person liable to pay tax on the taxable service involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

S.No.	In case of	Value of service portion shall be _____ of the total amount charged for the works contract
1.	works contracts entered into for execution of original works	40%
2.	works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods	70%
3.	other works contracts, not covered under in above two cases, including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property	60%

Points which merit consideration

1. Meaning of original works

Original works **means**

(i) all new constructions;
(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

2. Meaning of total amount

Particulars		**Amount**	**Amount**
Gross amount charged for the works contract			xxxx
Add: Value of all goods and services supplied by the service receiver in/in relation to the execution of the works contract (whether or not supplied under the same contract or any other contract)	FMV of such goods & services (determined in accordance with the generally accepted accounting principles) Less: (i) the amount charged for such goods or services, if any, by service receiver; and (ii) VAT/sales tax, if any, levied thereon	xxxx xxxx	xxxx
Total amount			xxxx

3. It is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

2. Valuation of money changing service-Rule 2B amended

With the introduction of negative list of services, provisions of section 65 have ceased to exist. Therefore, the reference to sub-clauses (zm) and (zzk) of clause (105) of section 65 has been removed from rule 2B.

3. 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 [Rule 2C inserted]

Subject to the provisions of section 67, the value of service portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following table, namely:-

S.No.	**Description**	**Value of taxable service shall be ____ 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 goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60%

1. Meaning of total amount

Particulars			**Amount**
Gross amount charged			xxxx
Add: 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	FMV of all goods & services supplied by the service receiver (determined in accordance with the generally accepted accounting principles) Less: (i) the amount charged for such goods or services, if any, by the service receiver; and (ii) VAT/sales tax, if any, levied thereon	xxxx xxxx	xxxx
Total Amount			xxxx

2.It is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985.

4. Rule 3 relating to manner of determination of value amended

Before Amendment

Earlier in rule 3, "prescribed manner" provided for determination of the value of taxable service was inadvertently made applicable to the situation where the consideration received is not wholly or partly consisting of money. However, such a situation was fully covered by section 67(2) of the Finance Act, 1994.

After Amendment

Consequently, rule 3 has been suitably amended. Hence, now the prescribed manner for determination of the value of taxable service is applicable only in a situation where such value is not ascertainable.

5. Reference to section 65(105)(zzzx) substituted by the words "telecommunication service"

With the introduction of negative list of services, provisions of section 65 have ceased to exist. Therefore, the reference to sub-clauses (zzzx) of clause (105) of section 65 has been substituted with the telecommunication service.

6. Amendments in rule 6 relating to cases in which the commission, costs, etc., will be included or excluded

(a) Sub-rule (1)-Inclusions to taxable value-Clause (x) inserted

Clause (x) has been inserted in sub-rule (1) which provides as follows:-

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

This change is relevant in the context of negative list where such amounts may be collected in the name of demurrage, but will actually be in all respects a service.

(b) Sub-rule (2)-Exclusions to taxable value

(i)Clause (iv) substituted with the new clause

Before Amendment

Earlier, interest on loans was excluded from the value of taxable service by virtue of rule 6(2).

After Amendment- Notification No. 24/2012-ST dated 06.06.2012

Clause (iv) has been substituted with a new clause which excludes interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable.

(ii) Clause (vi) and (vii) inserted

As per newly inserted clause (vi) and (vii), following expenses have been excluded from the value of taxable services:-

Clause (vi)

Accidental damages due to unforeseen actions not relatable to the provision of service.

Clause (vii)

Subsidies and grants disbursed by the Government, not directly affecting the value of service.

(c) Rule 7 providing that actual consideration would be the value of taxable service provided from outside India omitted

In the Negative List approach, rule 7 may not be required; therefore it is has been omitted.

D. AMENDMENTS IN THE SERVICE TAX RULES, 1994

1. All assessees to file Service Tax Returns electronically

Service Tax Rules, 1994 have been amended to provide that every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year. The amendment has been made effective from October 1, 2011.
Earlier, electronic filing of service tax returns was mandatory for the assessees who had paid service tax of ₹ 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

[Notification No. 43/2011 ST dated 25.08.2011]

Procedure for electronic filing of Central Excise and Service Tax returns and for electronic payment of excise duty and service tax

Central Excise and Service Tax returns, the DG (Systems) has issued comprehensive instructions outlining the procedure for electronic filing of Central Excise duty and Service Tax returns and electronic payment of taxes under ACES. The said instructions outline the registration process for new assessees, existing assessees, non–assessees and for Large Taxpayers Units, steps for preparing and filing of return, use of XML Schema for filing dealer's return, procedure for obtaining acknowledgement of e-filed return, procedure for e-payment etc.

[Circular No. 956/17/2011 CX dated 28.09.2011]

2. Amendments made by Notification No. 3/2012-ST dated 17.03.2012 (effective from 01.04.2012)

(a) Partnership firm defined [Rule 2(cd)]

Rule 2(cd) defines partnership firm as follows:-

Partnership firm includes limited liability partnership.

(b) Amendments in rule 4A

(i)Time limit for issue of invoice/ bill/ challan raised to 30 days [Sub-rule (1)]

Before Amendment

Earlier, under rule 4A(1), an invoice has to be issued within **14 days** from the date of:-

(i) completion of such taxable service or
(ii) receipt of any payment towards the value of such taxable service whichever is earlier.

After Amendment

Rule 4A(1) has been amended to increase the time-limit for issuance of invoice from **14 days to 30 days**.

(ii) Invoice to be issued within 45 days in case of banking and other financial institution including NBFC [Fourth proviso to rule 4A inserted*]

The time-limit for issuance of invoice, bill or challan, as the case may be, shall be 45 days in case where the **service provider is:**

(i)A banking company
(ii) A financial institution including a non-banking financial company providing service in relation to any person.
(*as amended by Notification No. 36/2012 dated 20.06.2012)

(c) Amendments in rule 6

(i) Individuals/partnership firms with aggregate value of taxable services of ₹ 50 lakh or less in previous year allowed to pay service tax on payment basis in current year upto a total of ₹ 50 lakh [Fourth proviso to sub-rule (1) inserted]

In case of **individuals and partnership firms** whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, the due dates for payment of service tax on taxable services provided or **agreed** to be provided by him up to a total of ₹ 50 lakh in the current financial year, at the option of service provider, is as follows:-

S.No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6th day of the following quarter in which the payment is received
2.	In any other case	5th day of the following quarter in which the payment is received
3.	In the case payment is received in the quarter ending in March	31st day of March

(ii) Restrictions in rule 6(4B) omitted thereby allowing unlimited amount of permissible adjustment of excess service tax paid
Before Amendment

Earlier the excess amount of service tax paid on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification was allowed subject to the following conditions:-

(a) The excess payment shall be utilized for the payment of service tax for the subsequent month liability subject to maximum of ₹ 2,00,000/- for a relevant month or quarter, as the case may be.

(b) The excess amount paid by a registered assessee, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.
(c) The adjustment shall be intimated to the jurisdictional superintendent of Central Excise within 15 days from such adjustment.

After Amendment

All the three aforesaid conditions [mentioned in point (a) to (c) above] have now been dispensed with. Consequently, sub-rule (4B) now provides as under:-
The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.

(iii) Changes in the composition rates

A. In case of insurer carrying on life insurance business [Sub-rule (7A)]

Where amount of the gross premium allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service:-

	Rate of service tax	
	Prior to amendment (Till 31.03.2012)	**After amendment (With effect from 01.04.2012)**
First	1.5% of the gross amount of premium charged	3% of the gross amount of premium charged
Subsequent year	1.5% of the gross amount of premium charged	1.5% of the gross amount of premium charged

B. In case of sale/purchase of foreign currency including money changing [Sub-rule (7B)]

S.No.	**For an amount**	**Rate of service tax**	
		Prior to amendment (Till 31.03.2012)	**After amendment (With effect from 01.04.2012)**
1.	Upto ₹ 100,000	**0.1 %** of the gross amount of currency exchanged or ₹ **25** whichever is higher	**0.12 %** of the gross amount of currency exchanged or ₹ **30** whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ **100 + 0.05 %** of the gross amount of currency exchanged	₹ **120 + 0.06 %** of the gross amount of currency exchanged
3.	Exceeding ₹ 10,00,000	₹ **550 + 0.01 %** of the gross amount of currency exchanged or ₹ **5,000** whichever is lower	₹ **660 + 0.012 %** of the gross amount of currency exchanged or ₹ **6,000** whichever is lower

C. In case of Distributor or Selling Agents of Lotteries [Sub-rule (7C)] :

Guaranteed lottery prize payout	**Amount of service tax payable on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw**	
	Prior to amendment (Till 31.03.2012)	**After amendment (With effect from 01.04.2012)**
More than 80%	₹ 6000/-.	₹ 7000/-
Less than 80%	₹9000/-	₹ 11000/-

3.Amendments made by Notification No. 36/2012 dated 20.06.2012 (effective from 01.07.2012)

(a) New definitions inserted in rule 2(1)

(i) Banking company: "Banking company" **means** a banking company as defined in section 5 of the Banking Regulation Act, 1949, and

includes the State Bank of India any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, any corresponding new bank constituted by section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and any other financial institution notified by the Central Government in this behalf [Sub-clause (bb)].

(ii)Body corporate: includes a company incorporated outside India but

does not include-

(a) a corporation sole;

(b) a co-operative society registered under any law relating to co-operative societies; and

(c) any other body corporate (not being a company as defined in this Act) which the Central Government may, by notification in the Official Gazette, specify in this behalf [Sub-clause (bc)].

(iii) Financial institution: Financial institution means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:–

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own:

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature:

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972:

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lumpsum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person,

but does not include any institution, which carries on as its principal business,–

(a) agricultural operations; or

(aa) industrial activity; or

(b) the purchase or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons [Sub-clause (bd)].

(iv) Goods carriage: Goods carriage means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods [Sub-clause (c1a)].

(v) Insurance agent: Insurance agent means an insurance agent licensed under Section 42 of the Insurance Act, 1938 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance,

renewal or revival of policies of insurance [Sub-clause (cba)]

(vi) Legal service: means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority [Sub-clause (cca)].

(vii) Life insurance business: means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any [Sub-clause (ccb)].

(viii) Non-banking financial company: Non-banking financial company means–

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify [Sub-clause (ccc)].

(ix) Place of provision: shall be the place as determined by Place of Provision of Services Rules 2012 [Sub-clause (dd)].

(x) Renting of immovable property: means any service provided or agreed to be provided by renting of immovable property or any other service in relation to such renting [Sub-clause (f)].

(xi) Supply of manpower: means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control [Sub-clause (g)].

(b) Sub-clause (d) to rule 2(1) defining person liable to pay service tax substituted with new sub-clause

Person liable to pay service tax means the person providing the service. However, in respect of the taxable services notified under sub-section (2) of section 68 of the ;Act, person liable to pay service tax means,-

(A) in relation to service provided or agreed to be provided by an **insurance agent** to any person carrying on the insurance business, the recipient of the service.

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

- any factory registered under or governed by the Factories Act, 1948;
- any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India;
- any co-operative society established by or under any law;
- any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder;
- any body corporate established, by or under any law; or

- any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

However, when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

(C) in relation to service provided or agreed to be provided by way of **sponsorship** to anybody corporate or partnership firm located in the taxable territory, the recipient of such service;

(D) in relation to service provided or agreed to be provided by,-

- an **arbitral tribunal**, or
- an **individual advocate or a firm of advocates** by way of legal services, to any business entity located in the taxable territory, the recipient of such service;

(E) in relation to **support services** provided or agreed to be provided by Government or local authority except,-

(a) renting of immovable property, and

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

to any business entity located in the taxable territory, the recipient of such service;

(F) in relation to services provided or agreed to be provided by way of :-

(a) renting of a motor vehicle designed to carry passengers, to any person who is not engaged in a similar business; or
(b) supply of manpower for any purpose; or
(c) service portion in execution of a works contract-

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub- section (2) of section 68 of the Act, for each respectively.
(G) in relation to any taxable service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service.

(c) Provisions relating to the invoice under rule 4A amended
(i) Clause (iii) to sub-rule (1)
Before amendment
Earlier, in clause (iii) of rule 4A(1), the invoice must contain the description, classification and value of taxable service provided or to be provided.

After Amendment

With the negative list approach of taxation of services, classification of service is not required to be mentioned on the invoice now and the words "provided or to be provided" in rule 4A(1) have been substituted with the words "provided or **agreed to be provided**".
(ii) First proviso to sub-rule (1) and first proviso to sub-rule (2) substituted with new provisos
(a) First proviso to sub-rule (1)

Now, the relaxation that invoice may not be serially numbered and may not contain the address of the service receiver has been restricted to a banking company or a financial institution including non-banking financial company.
Earlier, the said relaxation was also available to any other body corporate or any other person providing banking and other financial services.

(b) First proviso to sub-rule (2)

Similarly, the said relaxation has also been so restricted in the aforesaid manner in case of the input service distributor.

(iii) Fifth proviso to sub-rule (1) substituted with a new proviso

Earlier, the relaxation that invoice would include ticket in any form by whatever name called and it may not contain the registration number of the service provider and service recipient was available in case of service of transport of passengers **by air**.
Now the said relaxation has been extended in case of service of transport of passengers **by any mode of transport**.
(d) New rule 6A relating to the export of services inserted

(i) Conditions to be fulfilled for service to be treated as export of service [Sub-rule (1)]:-

The provision of any service provided or agreed to be provided shall be treated as export of service when,-
(a) the service provider is located in the taxable territory,
(b) the service receiver is located outside India and the place of provision of the service is outside India,
(c) the service is not a service specified in the negative list (Section 66D) of the Act, (d) the payment for such service has been received by the service provider in convertible foreign exchange, and

(e) the service provider and service receiver are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.

(ii) Central Government empowered to grant rebate on inputs/input services used in providing service exported [Sub-rule (2)]

Where any service is exported [in terms of sub-rule (1) above], the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.

Safeguards, conditions and limitations for claiming rebate on inputs and input services

In exercise of this power, the Central Government has issued **Notification No. 39/2012-ST dated 20.06.2012** providing the safeguards, conditions and limitations for claiming rebate on inputs and input services:-

(i) Conditions and limitations:-

1. Service has been exported in terms of rule 6A.

2. Duty on the inputs/service tax on input services, rebate of which has been claimed, has been paid to the supplier/service provider respectively.

If the exporter himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.

3. No CENVAT credit has been availed of on inputs and input services on which rebate has been claimed.

4. In case any of the aforesaid conditions is not fulfilled, rebate paid, if any, shall be recoverable with interest in accordance with the provisions of section 73 and section 75 of the Finance Act, 1994.

5. Amount of rebate claimed is not less than ₹ 1,000.

The Notification also prescribes the procedure for claiming the rebate on inputs and input services.

(f) Other changes

S.No.	Rule	Amendment
1.	4(1)	Reference to erstwhile charging section 66 has been substituted with the new charging section 66B.
2.	5(2)(i)	Sub-clause (a) has been substituted with the following sub-clause:- (a) providing of any service
3.	5B	Rule 5B has been omitted.
4.	6(7)	Reference to erstwhile charging section 66 has been substituted with the new charging section 66B.
5.	6(7A)	Reference to erstwhile charging section 66 has been substituted with the new charging section 66B.
6.	6(7B)	Reference to erstwhile sub-clauses (zm) and (zzk) of clause (105) of section 65 has been omitted.
7.	6(7C)	Reference to erstwhile sub-clause (zzzzn) of clause (105) of section 65 of the said Act has been omitted.

E. AMENDMENTS/CLARIFICATIONS IN THE POINT OF TAXATION RULES, 2011

CLARIFICATION

1. Service to be treated as "completed" on completion of all the auxiliary activities enabling the service provider to issue the invoice

CBEC has clarified that the test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. The Service Tax Rules, 1994 require that invoice should be issued within a period of 30 days from the completion of the taxable service. The invoice needs to indicate inter alia the value of service so completed. Thus, it is important to identify the service so completed. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. However, it has been clarified that such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

The Board has elucidated that the above interpretation also applies to determination of the date of completion of provision of service in case of "continuous supply of service".

[Circular No. 144/13/2011- ST dated 18.07.2011]

AMENDMENTS

1. Date of payment [Rule 2A] [Effective from 01.04.2012]

Rule 2A has been inserted to define the date of payment.
For the purposes of these rules, "date of payment" shall be:-
(a) date on which the payment is entered in the books of accounts or
(b) date on which payment is credited to the bank account of the person liable to pay tax
whichever is earlier.
(A) Date of payment in case of change in effective rate of tax or a new levy between the above two dates
In case,
(i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account;
(ii) the bank account is credited **after four working days** from the date when there is change in effective rate of tax or a service is taxed for the first time; and
(iii) the payment is made by way of an instrument which is credited to a bank account,
the date of payment shall be the date of credit in the bank account instead of the date of recording of payment in the books of accounts.

Analysis

Since rate of service tax has been changed from 10% to 12% with effect from 01.04.2012,

(i) In case where service has been provided before 01.04.2012 and the cheque / demand draft etc. has been received upto March 31, 2012, applicable rate of service tax would be 10% provided cheque / demand draft is credited in the bank account by April 5, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 5, 2012] and consequently, new rate of 12% would be applicable.

(ii) In case where date of issuance of invoice and receipt of payment by cheque / demand draft etc. is received before 01.04.2012, applicable rate of service tax would be 10% provided cheque / demand draft etc. is credited in the bank account by April 5, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 5, 2012] and consequently, new rate of 12% would be applicable.

(B) If any rule requires determination of the time or date of payment received: the expression "date of payment" shall be construed to mean such date on which the payment is received.

[Notification No. 04/2012-ST dated 17.03.2012]

2. Amendments in rule 3 relating to determination of point of taxation [Effective from 01.04.2012]

(a) Proviso to clause (a) amended

Before Amendment

In case the invoice is not issued within 14 days of the completion of the provision of the service, the point of taxation shall be date of such completion.

After Amendment

In order to align the aforesaid proviso with increased time-limit for issuance of invoice from 14 days to 30 days (45 days in case of banks and financial institutions including NBFCs) in rule 4A of the Service Tax Rules, 1994, proviso to clause (a) of rule 3 has been substituted with the following proviso:-

In case the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994 (30 or 45 days, as the case may be) of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) Proviso to rule 3 inserted

For the purposes of clauses (a) and (b), —

(i) Date of completion of provision of service in case of continuous supply of service: In case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

(ii) Point of taxation in case where payment upto ₹ 1,000 received in excess of the invoiced amount

Wherever the provider of taxable service receives a payment up to ₹ 1,000 in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined on the basis of invoice or completion of service, as the case may be, rather than payment.

Simultaneously, an amendment has also been made in the Service Tax Rules, 1994 which provides that service provider is not required to issue an invoice in the aforementioned case for such excess amount upto ₹ 1,000.

Purpose of the aforesaid provision:-

As a measure of added facilitation, an option has been provided to determine the point of taxation in respect of small advances up to ₹ 1000, in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment. Such provision is expected to address the accounting problems faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers.

[Notification No. 04/2012-ST dated 17.03.2012]

3. Rule 5 relating to payment of tax on new services substituted with the new rule [Effective from 01.04.2012]

Rule 5 has been substituted with a new rule which provides as follows:- Where a service is taxed for the first time, then,—

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

(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within 14 days** of the date when the service is taxed for the first time.

Notification No. 04/2012-ST dated 17.03.2012]

4. Omission of rule 6 relating to determination of point of taxation in case of continuous supply of service [Effective from 01.04.2012]

Since the essence of the rule applicable in case of continuous supply of service is the same as the main rule-rule 3, the separate rule for continuous supply of service has been omitted and merged with the main rule.

[Notification No. 04/2012-ST dated 17.03.2012]

5. Rule 7 substituted with a new rule [Effective from 01.04.2012]

Before Amendment

Earlier, rule 7 provided that in the following cases, subject to specified conditions, date of receipt or payment of consideration would be the point of taxation:-

(a) Person liable to pay service tax under reverse charge mechanism

(b) Services covered by rule 3(1) of the Export of Services Rules, 2005

(c) Individuals or proprietary firms or partnership firms providing the eight specified services**

Further, in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be:-
(a) the date of credit in the books of account of the person receiving the service or
(b) date of making the payment whichever is earlier.

After Amendment

Category (b) has been omitted now.

Further, the benefit of payment of service tax on receipt basis earlier provided to eight specified services has also been withdrawn. However, in case of **individuals and partnership firms** whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, service tax on taxable services provided or to be provided by him up to a total of ₹ 50 lakh in the current financial year is payable on receipt basis (provided in Service Tax Rules, 1994).

New rule 7 reads as under:-

Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:
However, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.
Outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.
****Note:** CBEC vide **Circular No. 154/5/ 2012 – ST dated 28.03.2012** has clarified that, in respect of the specified eight services, for invoices issued on or before 31st March 2012, the point of taxation shall be the date of payment.

Further, Board has clarified vide **Circular No. 158/9/2012-ST dated 08.05.2012** that the rate of service tax prevalent on the date when point of taxation occurs is the rate of service tax applicable on any taxable service. Therefore, in the abovementioned cases where the point of taxation is the date of payment, service tax should be charged @ 12% on these services, if the payment is received on or after 1st April, 2012 even though the invoices have been issued before 1st April, 2012.

Further, the supplementary invoices may be issued to reflect the new rate of tax, if required to recover the differential amount and that CENVAT credit can be availed on such supplementary invoices and tax payment challans (in case of reverse charge).

[Notification No. 04/2012-ST dated 17.03.2012]

6. Determination of point of taxation in other cases [Rule 8A inserted] [Effective from 01.04.2012]

A residual rule-rule 8A has been inserted to determine the point of taxation by way of best judgment to handle situations where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine point of taxation. It provides as follows:-
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.

[Notification No. 04/2012-ST dated 17.03.2012]

7. For the words, **"provided or to be provided"** wherever they occur, the words **"provided or agreed to be provided"** has been substituted.

[Effective from 01.07.2012]
[Notification No. 37/2012-ST dated 20.06.2012]

F. CHANGES IN THE REVERSE CHARGE MECHANISM [Effective from 01.07.2012]

A number of changes have been made in the reverse charge provisions. In three of services namely hiring of means of transport, works contract and man power supply, both service receivers and service providers have been made liable to pay service tax in the prescribed percentages. In few other services, service receiver has been made liable to pay the entire service tax.
Section 68(2) of the Finance Act, 1994 has been suitably amended by the Finance Act, 2012 whereby a proviso has been added to the said section authorising Central Government to notify the service and extent of service tax payable each by the service provider and service receiver.
In view of the above amendment, **Notification No. 30/2012 dated 20.06.2012** has been issued which provides as follows:

Services where entire service tax is payable by the service receiver:-

1.Insurance agent services: The taxable services provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;

2.Goods transport agency services: The taxable services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—
(a)any factory registered under or governed by the Factories Act, 1948.

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

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

(d)any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder.
(e)anybody corporate established, by or under any law, or

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

3. Sponsorship services: The taxable services provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory.
4. Legal services: The taxable services provided or agreed to be provided to any business entity located in the taxable territory by,-

(a)an arbitral tribunal, or

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

(c)Government or local authority by way of support services excluding,-
(i)renting of immovable property, and
(ii)services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994.

5. **Renting of a motor vehicle:** The taxable services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business by any individual/HUF/partnership firm (whether registered or not) including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory.

6. **Services provided by a person located in non-taxable territory:** The taxable services provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory.

Services where service tax is jointly payable by the both service provider and service receiver:-

S.No.	Description of a service	Percentage payable by the service provider	Percentage payable by the service receiver
1	In respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business by any individual/HUF/partnership firm (whether registered or not) including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory	60%	40%
2	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose by any individual/HUF/partnership firm (whether registered or not) including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory	25%	75 %
3	in respect of services provided or agreed to be provided in service portion in execution of works contract by any individual/HUF/partnership firm (whether registered or not) including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory	50%	50%

Place of Provision of Services Rules, 2012

Rules at a glance:

Rule 3	**Location of the Receiver**
Rule 4	**Performance based Services**
Rule 5	**Location of Immovable Property**
Rule 6	**Services relating to Events**
Rule 7	**Part performance of a service at different locations**
Rule 8	**Services where the Provider as well as Receiver is located in Taxable Territory**
Rule 9	**Specified services- Place of provision is location of the service provider**
Rule 10	**Place of Provision of a service of transportation of goods**
Rule 11	**Passenger Transportation Services**
Rule 12	**Services provided on board conveyances**
Rule 13	**Power to notify services or circumstances**
Rule 14	**Order of application of Rules**

Rule 3- Location of the Receiver

(1) What is the implication of this Rule?

The main rule or the default rule provides that a service shall be deemed to be provided where the receiver is located.

The main rule is applied when none of the other later rules apply (by virtue of rule 14 governing the order of application of rules- see para 5.14 of this guidance paper). In other words, if a service is not covered by an exception under one of the later rules, and is consequently covered under this default rule, then the receiver's location will determine whether the service is leviable to tax in the taxable territory.

The principal effect of the Main Rule is that:-

A. Where the location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory and service tax will be payable.

B. However if the receiver is located outside the taxable territory, no service tax will be payable on the said service.

(2) If the place of provision of a taxable service is the location of service receiver, who is the person liable to pay tax on the transaction?

Service tax is normally required to be paid by the provider of a service, except where he is located outside the taxable territory and the place of provision of service is in the taxable territory.

Where the provider of a service is located outside the taxable territory, the person liable to pay service tax is the receiver of the service in the taxable territory, unless of course, the service is otherwise exempted.
Following illustration will make this clear:-

A company ABC provides a service to a receiver PQR, both located in the taxable territory.
Since the location of the receiver is in the taxable territory, the service is taxable. Service tax liability will be discharged by ABC, being the service provider and being located in taxable territory.

However, if ABC were to supply the same service to a recipient DEF located in non-taxable territory, the provision of such service is not taxable, since the receiver is located outside the taxable territory.

If the same service were to be provided to PQR (located in taxable territory) by an overseas provider XYZ (located in non-taxable territory), the service would be taxable, since the recipient is located in the taxable territory. However, since the service provider is located in a nontaxable territory, the tax liability would be discharged by the receiver, under the reverse charge principle (also referred to as "tax shift").

(3) Who is the service receiver?

Normally, the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

Illustration

A lady leaves her car at a service station for the purpose of servicing. She asks her chauffer to collect the car from the service station later in the day, after the servicing is over. The chauffer makes the payment on behalf of the lady owner and collects the car.

Here the lady is the 'person obliged to make the payment' towards servicing charges, and therefore, she is the receiver of the service.

(4) What would be the situation where the payment for a service is made at one location (say by the headquarters of a business) but the actual rendering of the service is elsewhere (i.e. a fixed establishment)?

Occasionally, a person may be the person liable to make payment for the service provided on his behalf to another person. For instance, the provision of a service may be negotiated at the headquarters of an entity by way of centralized sourcing of services whereas the actual provision is made at various locations in different taxing jurisdictions (in the case of what is commonly referred to as a multi-locational entity or MLE). Here, the central office may act only as a facilitator to negotiate the contract on behalf of various geographical establishments.

Each of the geographical establishments receives the service and is obligated to make the payment either through headquarters or sometimes directly. When the payment is made directly, there is no confusion. In other situations, where the payment is settled either by cash or through debit and credit note between the business and fixed establishments, it is clear that the payment is being made by a geographical location. Wherever a fixed establishment bears the cost of acquiring, or using or consuming a service through any internal arrangement (normally referred to as a "recharge", "reallocation", or a "settlement"), these are generally made in accordance with corporate tax or other statutory requirements. These accounting arrangements also invariably aid the MLE's management in budgeting and financial performance measurement.

Various accounting and business management systems are generally employed to manage, monitor and document the entire purchasing cycle of goods and services (such as the ERP Enterprise Resource Planning System). These systems support and document the company processes, including the financial and accounting process, and purchasing process.

Normally, these systems will provide the required information and audit trail to identify the establishment that uses or consumes a service.

It should be noted that in terms of proviso to section 66B, the establishments in a taxable and non-taxable territory are to be treated as distinct persons. Moreover, the definition of "location of the receiver" clearly states that "where the services are "used" at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service" will be the location. Thus, the taxing jurisdiction of service, which is provided under a 'global framework agreement' between two multinational companies with the business establishment located outside the taxable territory, but which is used or consumed by a fixed establishment located in the taxable territory, will be the taxable territory.

(5) What is the place of provision where the location of receiver is not ascertainable in the ordinary course of business?

Generally, in case of a service provided to a person who is in business, the provider of the service will have the location of the recipient's registered location, or his business establishment, or his fixed establishment etc, as the case may be. However, in case of certain services (which are not covered by the exceptions to the main rule),

the service provider may not have the location of the service receiver, in the ordinary course of his business. This will also be the case where a service is provided to an individual customer who comes to the premises of the service provider for availing the service and the provider has to, more often than not, rely on the declared location of the customer. In such cases the place of provision will be the location of the service provider. It may be noted that the service provider is not required to make any extraordinary efforts to trace the address of the service receiver. The address should be available in the ordinary course of business.

In case of certain specified categories of services, the place of provision shall be the place where the services are actually performed. These are discussed in the following paragraphs.

Rule 4- Performance based Services

(6) What are the services that are provided "in respect of goods that are made physically available, by the receiver to the service provider, in order to provide the service"?- sub-rule (1):

Services that are related to goods, and which require such goods to be made available to the service provider or a person acting on behalf of the service provider so that the service can be rendered, are covered here. The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed. Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/ analysis of goods, dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer. Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys.

(7) What is the implication of the proviso to sub-rule (1)?

The proviso to this rule states as follows:-
"Provided further that where such services are provided from a remote location by way of electronic means, the place of provision shall be the location where goods are situated at the time of provision of service."

In the field of information technology, it is not uncommon to provide services in relation to tangible goods located distantly from a remote location. Thus the actual place of performance of the service could be quite different from the actual location of the tangible goods. This proviso requires that the place of provision shall be the actual location of the goods and not the place of performance, which in normal situations is one and the same.

(8) What are the services that are provided "to an individual … which require the physical presence of the receiver … with the provider for provision of the service."?- sub-rule (2)

Certain services like cosmetic or plastic surgery, beauty treatment services, personal security service, health and fitness services, photography service (to individuals), internet café service, classroom teaching, are examples of services that require the presence of the individual receiver for their provision. As would be evident from these examples, the nature of services covered here is such as are rendered in person and in the receiver's physical presence.
Though these are generally rendered at the service provider's premises (at a cosmetic or plastic surgery clinic, or beauty parlor, or health and fitness centre, or internet café), they could also be provided at the customer's premises, or occasionally while the receiver is on the move (say, a personal security service; or a beauty treatment on board an aircraft).

(9) What is the significance of "..in the physical presence of an individual, whether represented either as the service receiver or a person acting on behalf of the receiver" in this rule?
This implies that while a service in this category is capable of being rendered only in the presence of an individual, it will not matter if, in terms of the contractual arrangement between the provider and the receiver

(formal or informal, written or oral), the service is actually rendered by the provider to a person other than the receiver, who is acting on behalf of the receiver.

Illustration
A modelling agency contracts with a beauty parlour for beauty treatment of say, 20 models. Here again is a situation where the modelling agency is the receiver of the service, but the service is rendered to the models, who are receiving the beauty treatment service on behalf of the modelling agency. Hence, notwithstanding that the modelling agency does not qualify as the individual receiver in whose presence the service is rendered, the nature of the service is such as can be rendered only to an individual, thereby qualifying to be covered under this rule.

Rule 5- Location of Immovable Property
In the case of a service that is 'directly in relation to immovable property', the place of provision is where the immovable property (land or building) is located, irrespective of where the provider or receiver is located.

(10) What is "immovable property"?
"Immovable Property" has not been defined in the Finance Act, 1994. However, in terms of section 4 of the General Clauses Act, 1897, the definition of immovable property provided in sub-section 3 (26) of the General Clauses Act will apply, which states as under:

"Immovable Property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

It may be noted that the definition is inclusive and thus properties such as buildings and fixed structures on land would be covered by the definition of immovable property. The property must be attached to some part of earth even if underwater.

(11) What are the criteria to determine if a service is 'directly in relation to' immovable property located in taxable territory?

Generally, the following criteria will be used to determine if a service is in respect of immovable property located in the taxable territory:

i) The service consists of lease, or a right of use, occupation, enjoyment or exploitation of an immovable property;

ii) the service is physically performed or agreed to be performed on an immovable property (e.g. maintenance) or property to come into existence (e.g. construction);

iii) the direct object of the service is the immovable property in the sense that the service enhances the value of the property, affects the nature of the property, relates to preparing the property for development or redevelopment or the environment within the limits of the property (e.g. engineering, architectural services, surveying and sub-dividing, management services, security services etc);

iv) the purpose of the service is:
a) the transfer or conveyance of the property or the proposed transfer or conveyance of the property (e.g., real estate services in relation to the actual or proposed acquisition, lease or rental of property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament);
b) the determination of the title to the property.
There must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property. For example, a legal firm's general opinion with respect to the capital gains tax liability arising from the sale of a commercial property in India is basically advice on taxation legislation in general even though it relates to the subject of an immovable property. This will not be treated as a service in respect of the immovable property.

(12) Examples of land-related services
i) Services supplied in the course of construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work;

ii) Renting of immovable property;
iii) Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster.
iv) Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed.
v) The surveying (such as seismic, geological or geomagnetic) of land or seabed.
vi) Legal services such as dealing with applications for planning permission.
vii) Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts.
viii) The supply of hotel accommodation or warehouse space.

(13) What if a service is not directly related to immovable property?

The place of provision of services rule applies only to services which relate directly to specific sites of land or property. In other words, the immovable property must be clearly identifiable to be the one from where, or in respect of which, a service is being provided. Thus, there needs to be a very close link or association between the service and the immovable property.
Needless to say, this rule does not apply if a provision of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.

For example, the services of an architect contracted to design the landscaping of a particular resort hotel in Goa would be land-related. However, if an interior decorator is engaged by a retail chain to design a common décor for all its stores in India, this service would not be land related.

The default rule i.e. Rule 3 will apply in this case.

(14) Examples of services which are not land-related

i) Repair and maintenance of machinery which is not permanently installed. This is a service related to goods.
ii) Advice or information relating to land prices or property markets because they do not relate to specific sites.
iii) Land or Real Estate Feasibility studies, say in respect of the investment potential of a developing suburb, since this service does not relate to a specific property or site.
iv) Services of a Tax Return Preparer in simply calculating a tax return from figures provided by a business in respect of rental income from commercial property.
v) Services of an agent who arranges finance for the purchase of a property.

Rule 6- Services relating to Events

(15) What is the place of provision of services relating to events?

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

(16) What are the services that will be covered in this category?

Services in relation to admission as well as organization of events such as conventions, conferences, exhibitions, fairs, seminars, workshops, weddings, sports and cultural events
are covered under this Rule.

Illustration 1

A management school located in USA intends to organize a road show in Mumbai and New Delhi for prospective students. Any service provided by an event manager, or the right to entry (participation fee for prospective students, say) will be taxable in India.

Illustration 2
An Indian fashion design firm hosts a show at Toronto, Canada. The firm receives the services of a Canadian event organizer. The place of provision of this service is the location of the event, which is outside the taxable territory. Any service provided in relation to this event, including the right to entry, will be non-taxable.

(17) What is a service ancillary organization or admission to an event?
Provision of sound engineering for an artistic event is a prerequisite for staging of that event and should be regarded as a service ancillary to its organization. A service of hiring a specific
equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission.

(18) What are event-related services that would be treated as not ancillary to admission to an event?
A service of courier agency used for distribution of entry tickets for an event is a service that
is not ancillary to admission to the event.

Rule 7- Part performance of a service at different locations

(19) What does this Rule imply?
This Rule covers situations where the actual performance of a service is at more than one location, and occasionally one (or more) such locations may be outside the taxable territory.
This Rule states as follows:-
"Where any service stated in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided".

The following example illustrates the application of this Rule:-

Illustration 1
An Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, Colombo 55%).

Notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, in this case Kerala.

This rule is, however, not intended to capture insignificant portion of a service rendered in any part of the taxable territory like mere issue of invoice, processing of purchase order or recovery, which are not by way of service actually performed on goods.

It is clarified that this rule is applicable in performance-based services or location-specific services (immovable property related or event-linked). Normally, such services when provided in a non-taxable territory would require the presence of separate establishments in such territories. By virtue of an explanation of sub-clause (44) of section 65B, they would constitute distinct persons and thus it would be legitimate to invoice the services rendered individually in the two territories.

Rule 8- Services where the Provider as well as Receiver is located in Taxable Territory

(20) What is the place of provision of a service where the location of the service provider and that of the service receiver is in the taxable territory?

The place of provision of a service, which is provided by a provider located in the taxable territory to a receiver who is also in the taxable territory, will be the location of the receiver.

(21) What is the implication of this Rule?

This Rule covers situations where the place of provision of a service provided in the taxable territory may be determinable to be outside the taxable territory, in terms of the application of one of the earlier Rules i.e. Rule 4 to 6, but the service provider, as well as the service receiver, are located in the taxable territory.

The implication of this Rule is that in all such cases, the place of provision will be deemed to be in the taxable territory, notwithstanding the earlier rules. The presence of both the service provider and the service receiver in the taxable territory indicates that the place of consumption of the service is in the taxable territory. Services rendered, where both the provider and receiver of the service are located outside the taxable territory, are now covered by the mega exemption.

Illustration

A helicopter of Pawan Hans Ltd (India based) develops a technical snag in Nepal. Say, engineers are deputed by Hindustan Aeronautics Ltd, Bangalore, to undertake repairs at the site in Nepal. But for this rule, Rule 4, sub-rule (1) would apply in this case, and the place of provision would be Nepal i.e. outside the taxable territory. However, by application of Rule 7, since the service provider, as well as the receiver, are located in the taxable territory, the place of provision of this service will be within the taxable territory.

Rule 9- Specified services- Place of provision is location of the service provider

(22) What are the specified services where the place of provision is the location of the service provider?

Following are the specified services where the place of provision is the location of the service provider:-
i) Services provided by a banking company, or a financial company, or a non-banking financial company to account holders;
ii) Online information and database access or retrieval services;
iii) Intermediary services;
iv) Service consisting of hiring of means of transport, up to a period of one month.

(23) What is the meaning of "account holder"? Which accounts are not covered by this rule?

"Account" has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule. Banking services provided to persons other than account holders will be covered under the main rule (Rule 3- location of receiver).

(24) What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?

Following are examples of services that are provided by a banking company or financial institution to an "account holder", in the ordinary course of business:-
i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;
ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

(25) What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?
Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), in the ordinary course of business:-
i) financial leasing services including equipment leasing and hire-purchase;
ii)merchant banking services;
iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;
iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;

v) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
vi) banker to an issue service.
In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise.

(26) What are "Online information and database access or retrieval services"?
"Online information and database access or retrieval services" are services in relation to online information and database access or retrieval or both, in electronic form through computer network, in any manner. Thus, these services are essentially delivered over the internet or an electronic network which relies on the internet or similar network for their provision. The other important feature of these services is that they are completely automated, and require minimal human intervention.

Examples of such services are:-
(i) online information generated automatically by software from specific data input by the customer, such as web-based services providing trade statistics, legal and financial data, matrimonial services, social networking sites;
(ii) digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports;
(iii) web-based services providing access or download of digital content.

The following services will not be treated as "online information and database access or retrieval services":-
i) Sale or purchase of goods, articles etc over the internet;
ii) Telecommunication services provided over the internet, including fax, telephony, audio conferencing, and videoconferencing;
iii) A service which is rendered over the internet, such as an architectural drawing, or management consultancy through e-mail;
iv) Repair of software, or of hardware, through the internet, from a remote location;
v) Internet backbone services and internet access services.

(27) What are "Intermediary Services"?

Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:
i) the supply between the principal and the third party; and
ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition.
Also excluded from this sub-rule is a person who arranges or facilitates a provision of a service (referred to in the rules as "the main service"), but provides the main service on his own account.
n order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".

Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable.

In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services':-

(i) Travel Agent (any mode of travel)
(ii) Tour Operator
(iii) Commission agent for a service [an agent for buying or selling of goods is excluded]
(iv) Recovery Agent

Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the 'main service'.

Illustration

A freight forwarder arranges for export and import shipments. There could be two possible situations here- one when he acts on his own account, and the other, when he acts as an intermediary.

When the freight forwarder acts on his own account (say, for an export shipment)

A freight forwarder provides domestic transportation within taxable territory (say, from the exporter's factory located in Pune to Mumbai port) as well as international freight service (say, from Mumbai port to the international destination), under a single contract, on his own account (i.e. he buys-in and sells fright transport as a principal), and charges a consolidated amount to the exporter. This is a service of transportation of goods for which the place of supply is the destination of goods. Since the destination of goods is outside taxable territory, this service will not attract service tax. Here, it is presumed that ancillary freight services (i.e. services ancillary to transportation- loading, unloading, handling etc) are "bundled" with the principal service owing to a single contract or a single price (consideration).

On an import shipment with similar conditions, the place of supply will be in the taxable territory, and so the service tax will be attracted.

When the freight forwarder acts as an intermediary

Where the freight forwarder acts as an intermediary, the place of provision will be his location.

Service tax will be payable on the services provided by him. However, when he provides a service to an exporter of goods, the exporter can claim refund of service tax paid under notification for this purpose.

Similarly, persons such as call centres, who provide services to their clients by dealing with the customers of the client on the client's behalf, but actually provided these services on their own account, will not be categorized as intermediaries.

(28) What is the service of "hiring of means of transport"?

The services of providing a hire or lease, without the transfer of right to use (explained in guide at point 6.6), is covered by this rule. Normally the following will constitute means of transport:-

i) Land vehicles such as motorcars, buses, trucks;
ii) Vessels;
iii) Aircraft;
iv) Vehicles designed specifically for the transport of sick or injured persons;
v) Mechanically or electronically propelled invalid carriages;
vi) Trailers, semi-trailers and railway wagons.

The following are not 'means of transport':-

i) Racing cars;
ii) Containers used to store or carry goods while being transported;
iii) Dredgers, or the like.

(29) What if I provide a service of hiring of a fleet of cars to a company on an annual contract? What will be place of provision of my service if my business establishment is located in New Delhi, and the company is located in Faridabad (Haryana)?

This Rule covers situations where the hiring is for a period of upto one month. Since hiring period is more than one month, this sub-rule cannot be applied to the situation. The place of provision of your service will be determined in terms of Rule 3 i.e. receiver location, which in this case is Faridabad (Haryana).

Rule 10- Place of Provision of a service of transportation of goods

(30) What are the services covered under this Rule?

Any service of transportation of goods, by any mode of transport (air, vessel, rail or by a goods transportation agency), is covered here. However, transportation of goods by courier or mail is not covered here.

(31) What is the place of provision of a service of transportation of goods?
Place of provision of a service of transportation of goods is the place of destination of goods, except in the case of services provided by a Goods Transportation Agency in respect of transportation of goods by road, in which case the place of provision is the location of the person liable to pay tax (as determined in terms of rule 2(1)(d) of Service Tax Rules, 1994 (since amended).

Illustration
A consignment of cut flowers is consigned from Chennai to Amsterdam. The place of provision of goods transportation service will be Amsterdam (outside India, hence not liable to service tax). Conversely, if a consignment of crystal ware is consigned from Paris to New Delhi, the place of provision will be New Delhi.

(32) What does the proviso to this Rule imply?

The proviso to this Rule states as under:-
"Provided that the place of provision of services of transportation of goods by goods transportation agency shall be the location of the person liable to pay tax."

Sub-rule 2(1)(d) of Service Tax Rules, 1994 provides that where a service of transportation of goods is provided by a 'goods transportation agency', and the consignor or consignee is covered under any of the specified categories prescribed therein , the person liable to tax is the person who pays, or is liable to pay freight (either himself or through his agent) for the transportation of goods by road in a goods carriage. If such person is located in non-taxable territory, then the person liable to pay tax shall be the service provider.

Illustration 1
A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Bhopal, Madhya Pradesh. Say, XYZ is a registered assessee and is also the person liable to pay freight and hence person liable to pay tax, in this case. Here, the place of provision of the service of transportation of goods will be the location of XYZ i.e. Haryana.

Illustration 2
A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Jammu (non-taxable territory). Say, as per mutually agreed terms between ABC and XYZ, the dealer in Jammu is the person liable to pay freight. Here, in terms of amended provisions of rule 2(1)(d), since the person liable to pay freight is located in non-taxable territory, the person liable to pay tax will be ABC. Accordingly, the place of provision of the service of transportation of goods will be the location of ABC i.e. Delhi.

Rule 11- Passenger Transportation Services

(33) What is the place of provision of passenger transportation services?
The place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey.

(34) What does a "continuous journey" mean?
A "continuous journey" means a journey for which:-
(i) a single ticket has been issued for the entire journey; or
(ii) more than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover in the journey

(35) What is the meaning of a stopover? Do all stopovers break a continuous journey?

"Stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. All stopovers do not cause a break in continuous journey. Only such stopovers will be relevant for which one or more separate tickets are issued. Thus a travel on Delhi-London- New York-London-Delhi on a single ticket with a halt at London on either side, or even both, will be covered by the definition of continuous journey. However if a separate ticket is issued, say New York-Boston-New York, the same will be outside the scope of a continuous journey.

Rule 12- Services provided on board conveyances

(36) What are services provided on board conveyances?

Any service provided on board a conveyance (aircraft, vessel, rail, or roadways bus) will be covered here. Some examples are on-board service of movies/music/video/ software games on demand, beauty treatment etc, albeit only when provided against a specific charge, and not supplied as part of the fare.

(37) What is the place of provision of services provided on board conveyances?

The place of provision of services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.

Illustration

A video game or a movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. The place of provision of this service will be Bangkok (outside taxable territory, hence not liable to tax).

If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg, then the place of provision will be Delhi (in the taxable territory, hence liable to tax).

Rule 13- Power to notify services or circumstances

(38) What is the implication of this Rule?

This Rule states as follows:-

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

The rule is an enabling power to correct any injustice being met due to the applicability of rules in a foreign territory in a manner which is inconsistent with these rules leading to double taxation. Due to the cross border nature of many services it is also possible in certain situations to set up businesses in a non-taxable territory while the effective enjoyment, or in other words consumption, may be in taxable territory. This rule is also meant as an anti-avoidance measure where the intent of the law is sought to be defeated through ingenious practices unknown to the ordinary ways of conducting business.

Rule 14- Order of application of Rules

(39) What is the implication of this Rule?

Rule 14 provides that where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

This Rule covers situations where the nature of a service, or the business activities of the service provider, may be such that two or more rules may appear equally applicable.

Following illustrations will make the implications of this Rule clear:-

Illustration 1

An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai. If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India.

Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.
By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

Illustration 2
For the Ms Universe Contest planned to be held in South Africa, the Indian pageant (say, located in Mumbai) avails the services of Indian beauticians, fashion designers, videographers, and photographers. The service providers travel as part of the Indian pageant's entourage to South Africa. Some of these services are in the nature of personalized services, for which the place of provision would normally be the location where performed (Performance rule-Rule 4), while for others, under the main rule (Receiver location) the place of provision would be the location of receiver.

Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.
By application of Rule 15, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

(40) Taxability of 'bundled services'
'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided
by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

Two rules have been prescribed for determining the taxability of such services in clause (3) of section 66F of the Act. These rules, which are explained below, are subject to the provisions of the rule contained in sub section (2) of section 66F, viz a specific description will be preferred over a general description as explained in para 9.1.2 above.

(1) Services which are naturally bundled in the ordinary course of business

The rule is – 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'

Illustrations -
• A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

• A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:
- Accommodation for the delegates
- Breakfast for the delegates,
- Tea and coffee during conference
- Access to fitness room for the delegates
- Availability of conference room
- Business centre

As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service it is able to capture the entire essence of the package. Thus the

service may be judged as convention service and chargeable to full rate. However it will be fully justifiable for the hotel
to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.

(2) Services which are not naturally bundled in the ordinary course of business

The rule is – 'If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a service which attracts the highest amount of service tax.'

Illustrations -

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

(3) Significance of the condition that the rule relating to 'bundled service' is subject to the provisions of sub-section (2) of section 66F.

Sub-section (2) of section 66 lays down **:** 'where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description' (refer para 9.1.2 above). This rule predominates over the rule laid down in sub-section (3) relating to 'bundled services'. In other words, if a bundled service falls under a service specified by way of a description then such service would be covered by the description so specified. The illustration, relating to a bundled service wherein a pandal and shamiana is provided in combination with catering service, given in the second bullet in para 9.1.2 above explains the operation of this rule.

(4) Manner of determining if the services are bundled in the ordinary course of business

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –

- There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
- The elements are normally advertised as a package.
- The different elements are not available separately.
- The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.