INDIRECT TAXES

AMENDMENTS

(Relevant for May 2011)

❖CA. Krishna Shankar Prasad
ICAI Faculty Member

AMENDMENTS IN EXCISE

BASIC CONCEPT

Central Excise Law extends to "designated areas" in Continental Shelf and Exclusive Economic Zone of India: The levy extends to the whole of India. India includes the territorial waters of India. Further, the Central Government has extended the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985 to the notified "designated areas" in the Continental Shelf and Exclusive Economic Zone of India. Accordingly, any goods produced or manufactured within –

(a) the territorial waters of India, and

(b) the 'designated areas' of the Continental Shelf or Exclusive Economic Zone,

which are treated as part of 'India', shall be leviable to excise duty.

Rate of levy of excise duty : The general rate of CENVAT (BED) as per the First Schedule to Tariff Act is 16%, however, by exemption notifications, the same is 10% w.e.f. 27-2-2010. In addition, Education Cess @ 2% and Secondary & Higher Education Cess @ 1% is also leviable on all excise duties. Therefore, if basic excise duty is 10% then, effective rate of excise duty will be 10.3% (including EC & SHEC).

CENVAT CREDIT, RULES, 2004

☞ **Capital Goods [Rule 2(a)] :-**

"Capital Goods" means,

(A)

(i) All goods falling under Chapter 82, Chapter, 84, Chapter 85, Chapter 90, heading no. 6805 and heading no. 6804 of the First Schedule to the Central Excise Tariff Act, 1985;

(ii) Pollution control equipment;

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

(iv) Moulds and dies, jigs and fixtures;

(v) Refractories and refractory materials;

(vi) Tubes and pipes and fittings thereof; and

(vii) Storage tank,

used in the factory of the manufacturer of the final products (but does not include any equipment or appliance used in an office) or used for providing output service.

(B) Motor vehicle registered in the name of provider of output service for providing the following taxable services which are

Courier Agency, Tour operator, Rent a cab scheme, Cargo handling agency, Goods transport agency, Outdoor caterer and Pandal and shamiana contractor.

(C) Dumpers or tippers, falling under Chapter 87 of First Schedule to Central Excise Tariff Act, 1985, registered in the name of provider of output service for providing following taxable services :

(1) Site formation and clearance, excavation and earthmoving and demolition and such other similar services; and

(2) Mining of mineral, oil or gas Service. [W.e.f. 22-6-2010]

(D) Components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide taxable services as specified in sub-clauses (B) and (C). [W.e.f. 24-9-2010]

Rule 3(7)(b) - Manner of utilization of Cenvat Credit for Payment of Duty on Final Product :-

(15) ***Clean Energy Cess (CEC) leviable u/s 83 of Finance Act, 2010 (It is being imposed w.e.f. 1-7-2010 on production of coal, lignite and peat)***	:	**No Credit of Clean Energy Cess.**

Note : No credit of CEC is available under Rule 3(1), Further, credit of other duties cannot be used for payment of CEC. Hence, this amount has to be paid in cash.

Rule 4(2) : CENVAT Credit on Capital Goods :-

Key Notes :-

(iv) Units eligible for SSI-exemption : Where an assessee is eligible to avail of the exemption under a notification based on value of clearances in a financial year (i.e. where an assessee is eligible for SSI-exemption), the CENVAT credit in respect of capital goods received by such assessee shall be allowed for 100% of the duty paid on such capital goods in the same financial year.

Eligibility : An assessee shall be "eligible" if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in the manner specified in the said notification (Not. No. 8/2003-CE) did not exceed Rs. 400 lakhs. [w.e.f. 1-4-2010]

Rule 6 :-

Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services

Rule 6(6) :- Credit allowed even if final product exempt :-

The above provisions shall not be applicable in case the excisable goods removed without payment of duty are :

(a) cleared to a –

(i) unit in a Special Economic Zone (SEZ) or

(ii) developer of a SEZ for their authorized operations or

(iii) unit in an Electronic Hardware Technology Park or Software Technology Park or

(iv) 100% EOU ; or

(b) supplied –

(i) to the United Nations or an International organization for their official use, or

(ii) to projects funded by them, on which duty exemption is available; or

(c) supplied for use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents, in terms of the provisions of the exemption notification governing them [w.e.f. 1-7-2010]

(d) cleared for export under bond under the provisions of the Central Excise Rules, 2002.

(e) gold or silver falling within Chapter 71 of the First Schedule arising in the course of manufacture of copper or zinc by smelting; or

(f) all goods which are exempt from the duties of customs (including additional duty of customs u/s 3(1) of Customs Tariff Act) when imported into India and are supplied,–

(i) against International Competitive Bidding; or

(ii) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(iii) to a power project awarded to a developer through tariff based competitive bidding.

Rule 9 - Document and Accounts

Rule 9(7), (8), (9) & (10) - Returns required to be filed in relation to credit

Rule 9(7) :- Manufacture of final products - Monthly Return (within 10 days from the close of the each month) In case of SSI - quarterly return (within 20 days after the close of the quarter)
Rule 9(8) :- First stage or a second stage dealer - Quarterly Return (withn 15 days) ***(Electronically)***
Rule 9(9) :- provider of output service - half yerly return (by the end of following month)
Rule 9(10) :- Input service distributor - half yerly return (by the end of following month)

Rule 9(11) :- The provider of output service or the input service distributor may submit a revised return to correct a mistake or omission within 60 days from the Date of Submission of the return.

Rule 9A

Mandatory e-filing of ER-5 and ER-6 : Where a manufacturer of final products has paid total duty of Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file such declaration (ER-5) and monthly return (ER-6) electronically. [Amendment w.e.f. 1-6-2010]

CENTRAL EXCISE, RULES, 2002

Rule 8 Manner of Payment

Key Notes :-

(i) ***Mandatory e-payment of duty [Amended w.e.f. 1-4-2010] :*** However, an assessee, who has paid total duty of rupees Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year shall deposit the duty electronically through internet banking. The due date of depositing the duty in this case shall be 6th of the following month/quarter. However in case of goods removed during the month/quarter of March the duty shall be paid by 31st March.

Rule 12 Filing of Return

(1) Return :-

Mandatory e-filing if gross duty of Rs. 10 lakh or more paid last year [W.e.f. 1-4-2010] : Where an assessee has paid total duty of Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file monthly/quarterly return, electronically.

(2) Annual Financial Information Statement :-

Mandatory e-filing : Where an assessee has paid total duty of Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall file the said Annual Financial Information Statement electronically. [w.e.f. 1-6-2010].

Rule 17 - Removal of goods by 100% EOU to Domestic Tariff Area :-

Mandatory e-filing : Where an assessee has paid total duty of Rs. 10 lakh or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year, he shall submit the said monthly return electronically. [W.e.f. 1-6-2010].

SMALL SCALE INDUSTRIES

☞ **Condition for availing exemption**

7. However in the following cases, even if the goods are bearing the brand name of other person still they shall be included in the limits :-

(e) ***Where the specified goods are in the nature of packing materials and are meant for use as packing material by or on behalf of the person whose brand name they bear. [w.e.f. 29-4-2010]***

EXPORT PROCEDURE

N.N. 42/2001:- Export of Final Product without payment of duty

Export of all excisable goods, except to Nepal and Bhutan without payment of duty --

I. Conditions :-

(i) Exporter shall furnish either Bond [Form B-1] with surety or security or LUT [Letter of UnderTaking] in Form UT-1.

(ii) Export should be made within 6 months from the date on which they were cleared for export from the factory or warehouse. The Commissioner or Maritime Commissioner may extend the period on sufficient cause being shown.

(iii) The export of excisable goods which are chargeable to nil rate of duty or are wholly exempted from payment of duty, <u>other than goods cleared by a 100% export oriented undertaking</u> shall not be allowed under this notification. (amendment w.e.f. 26-5-2010)

PENALTY & PROSECUTION

Central Excise Act, 1944

Section 33 - Power of adjudication :-

Where under this Act or by the rules made thereunder anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged --

Central Excise Officer	Power of Adjudicaiton (Amount of duty involved)
Superintendents **[W.e.f. 18-5-2010]**	Upto Rs. 1 lakh (excluding cases involving determination of rate of duty or valuation and cases involving extended period of limitation)
Deputy / Assistant Commissioners	Upto Rs. 5 lakhs (except the cases where Superintendents are empowered to adjudicate)
Joint Commissioners	Above Rs. 5 lakhs and upto Rs. 50 lakhs
Additional Commissioners	Above Rs. 20 lakhs and upto Rs. 50 lakhs
Commissioners	Without limit

Clarification on power of adjudication of cases given to Superintendents [W.e.f. 18-5-2010]

(a) They would be eligible to decide cases involving duty and/or CENVAT credit upto Rs. 1 Lakh in individual Show-Cause Notices(SCNs).

(b) They would not be eligible to decide cases which involve excisability of a product, classification, eligibility of exemption, valuation and cases involving suppression of facts, fraud etc.

(c) They would be eligible to decide cases involving wrong availment of CENVAT credit upto a monetary limit of upto Rs. 1 lakh.

(d) They would be eligible to decide SCN proposing only imposition of penalty under Rule 26 and 27 of the Central Excise Rules, 2002 or Rule 15 and 15A of the CENVAT Credit Rules, 2004.

DEMAND & RECOVERY

☞ Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded Section 11A :-

(2B) :- Voluntary payment & Pre-empting the Adjudication proceedings -

The assessee may pay the duty before service of notice on him on the basis of his own ascertainment or on the basis of duty ascertainment by central excise officer, and inform the Central Excise Officer of such payment in writing, who on receipt of such information shall not serve any notice in respect of the duty so paid.

Provided that the CEO may determine the amount of short payment of duty, if any, which in his opinion has not been paid by such person and, then, the CEO shall proceed to recover such amount in the manner specified in this section, and the period of 'one year' as referred in sub section (1) shall be counted from the date of receipt of such information.

No penalty in respect of any payment u/s 11A(2B) : No penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of duty under this sub-section and interest thereon. [Amendment by Finance Act, 2010 w.e.f. 8-5-2010]

SETTLEMENT COMMISSION

Procedure of followed by Settlement Commission for disposal of case

(E) Time limit for passing of final order : The final order on settlement shall be passed –

– within 9 months from the last day of the month in which the application was made,

– failing which –

(i) the settlement proceedings shall abate, and

(ii) the adjudicating authority before whom the preceding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application for settlement had been made.

Extension of time by 3 months : The aforesaid period of 9 months may, for reasons to be recorded in writing, be extended by the Settlement Commission for a further period not exceeding 3 months. (Amendment by the Finance Act, 2010 w.e.f. 8-5-2010)

Bar on subsequent application for settlement in certain cases [Section 32 O] :

[Amendment by the Finance Act, 2010 w.e.f. 8-5-2010]

Where –

(i) an order of settlement passed u/s 32F(5) provides for the imposition of a penalty on the person who made the application for settlement, on the ground of concealment of particulars of his duty liability; or

(ii) after the passing of an order of settlement in relation to a case, as aforesaid, such person is convicted of any offence under this Act in relation to that case; or

(iii) the case of such person is sent back to the Central Excise Officer having jurisdiction by the Settlement Commission under Section 32L,

then, he shall not be entitled to apply for settlement in relation to any other matter.

[Effect of amendment : General Bar on filing second application for settlement has been removed. Thus, an application for settlement can be filed as many times, as the aforesaid conditions stand non-violated.]

(Latest Cases)

☞ Basic Concepts

Case 1.

Issue - Marketability doesn’t mean hypothetical possibility

Bata India Ltd. v. CCEx. [2010] (SC)

Marketability doesn't mean hypothetical possibility of purchase and sale; it means commercial capability of being bought and sold. The fact that the product is sent outside for some job work doesn't establish its marketability.

Case 2.

Building/Monumental Stone, or, Articles of Cement/Concrete, etc. : The process of cutting or sawing or sizing or polishing or any other process, for converting of stone blocks into slabs or tiles, shall amount to manufacture. [Inserted by the Finance Act, 2010 w.e.f. 26-2-2010]

Aluminium Tubes & Pipe : The process of drawing or redrawing shall amount to manufacture. [Inserted by the Finance Act, 2010 w.e.f. 26-2-2010]

Case 3.

Process of slitting and cutting of steel coils to produce steel sheets and polyester films, which are used for the purposes of lamination, as the resultant product was not having different character, name and use. **- CCEx. v. Bemcee Ltd. [2010] (SC).**

☞ Excise Valuation

Case 4.

CCEx. v. Ford India Pvt. Ltd. [2010] 255 ELT A14 (SC)

Optional Extended warranty charges for cars are not includible in the assessable value of such cars.

Case 5.

Maruti Suzuki India Ltd. v. CCEx. [2010] 257 ELT 226 (Tri.-LB)

Pre-delivery inspection and after-sales services charges for the said services provided by the dealers form part of the transaction value/assessable value of the motor vehicles/cars and is liable to excise duty in the hands of manufacturer.

☞ Cenvat Credit Rules, 2004

Case 6.

Materials used in trial run/production

YES. Inputs used in trial production of final product are to be regarded as used directly or indirectly, in or in relation to the manufacture of final product. Hence, they are eligible for CENVAT Credit - **Tetra Pak India Pvt. Ltd. v. CCEx. [2010] (Tri-Mumbai).**

(Latest Circulars)

☞ Basic Concepts

Circular : 1

☞ Pickling and oiling of metals as preparatory steps not amount to manufacture ***[Circular No. 927/17/2010-CX, dated 24.6.2010]*** :

Pickling is removing surface oxides from metals by chemical or electro chemical reaction and pickle means "the chemical removal of surface oxides (scale) and other contaminants such as dirt from metal by immersion in an aqueous acid solution." Therefore it can be said that the process of pickling is only a chemical cleaning process to remove scales and dirt from the metal by immersion in chemical solution and does not result in emergence of any new commercially different commodity. Since no new product emerges as a result of the process of picking it will not amount to manufacture. Thus, mere undertaking the process of oiling and pickling as preparatory steps do not amount to manufacture.

☞ Excise Valuation

Transport cost for return journey of empty truck/vehicle - Deductible/Not includible: As per Rule 5 the actual or average cost of transportation from the place of removal up to the place of delivery is to be excluded. If the assessee is recovering an amount from the buyer towards the cost of return fare of the empty vehicle from the place of delivery, this amount will also be excluded. When onward freight is not includible in the assessable value of the excisable goods, there is no question of return freight being included in the assessable value, whether or not the return freight is mentioned in the relevant invoices.

[Circular No. 923/13/2010 - Cx, dated 19-5-2010]

☞ Rule 15 - Central Excise Rules, 2002 [Compounded levy Scheme] :

EC and SHEC will be imposed in addition to the aforesaid amounts. ***[Circular No. 921/11/2010-CX., dated 10-5-2010].***

CUSTOMS

BASIC CONCEPT

☞ Re-importation **Section 20** :-

- If the goods are imported into India after exportation there from,
- such goods shall be liable to duty and be subject to all the conditions to which goods of the
- like kind and value are liable on the importation thereof.

Condition –	**Importer will be liable pay customs duties equal to –**
1. Goods exported under claim of drawback or under bond without payment of duty or under claim for rebate and re-imported within 3 years (or extended period, if any) without being remanufactured / re-processed.	The amount of benefit availed on account of duty drawback and excise duty concessions/ rebate when the goods were exported.
2. Goods exported for repairs abroad and reimported by the same person within 3 years (or extended period, if any) without being re-manufactured / re-processed.	Duty leviable on a value = Fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not) + Insurance and freight charges, both ways.
3. Goods manufactured in India and re-imported into India – (a) for repairs or re-conditioning within 3 years from the date of exportation (in case of Nepal, such re-importation takes place within 10 years from date of exportation); or (b) for reprocessing; or refining; or re-making; or other similar process within 1 year from the date of exportation.	NIL, if – (a) such goods are exported within 6 months from the date of their re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow; and (b) the Assistant Commissioner of Customs is satisfied as regards identity of the goods;

TYPES OF DUTY

☞ Additional Duty of Customs (Countervailling Duty) **Section 3(1)** :-

More than one RSP declared – Highest to be taken : Where on any imported article more than one retails sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section. [w.e.f. 8-5-2010].

☞ **The manner and time of claimming drawback in case of goods exported other than by post.**

Rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 provides that a claim for drawback, in case of goods exported other than by post, shall be filed in the specified form within three months from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs

Extension of due date of filing the form & fees therefor [Amended w.e.f. 17-6-2010]:

Extending authority	Period of extension, which can be allowed by the authority	Fees payable along with the application for grant of extension
Assistant/Deputy Commissioner	Further Three months (beyond original period of 3 months)	(A) 1% of the FOB value of exports or (B) Rs. 1000/-, whichever is less.
Commissioner	Further Six months (beyond original period of 3 months & extension of 3 months by AC/CD)	(A) 2% of the FOB value or (B) Rs. 2000/-, whichever is less.

Grant, or refusal, of extension : The Assistant/Deputy Commissioner or the Commissioner may on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal.

☞ **Change in time periods available under rules 6, 7, 15 and 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995**

Following amendments have been made in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995:

(i) The time period for following has been extended from sixty days to 3 months :

(a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount of rate of drawback [Rule 6].

(b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low [Rule 7].

Further, the aforesaid periods of 3 months may be extended by a period of 3 months by Assistant/ Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less and a further period of 6 months by Commissioner of Central Excise/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or Rs. 2000/- whichever is less.

(ii) The extended period of 9 months for filing a supplementary claim under rule 15 will not be available on making an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less. Further, the said period may be extended by 6 months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or Rs. 2000/- whichever is less [Rule 15].

(iii) The time period available to an exporter for producing evidence of realisation of export proceeds, where the drawback has been recovered by the Government due to non-realisation of the export proceeds by the exporter, has been reduced from 1 year to 3 months from the date of realisation of sale proceeds provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India [Rule 16A].

Further, the aforesaid period of 3 months may be extended by a period of 9 months by Commisioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1000/- whichever is less.

SERVICE TAX

India includes territorial waters of India, the services provided in the territorial waters of India (i.e. upto 12 nautical miles from the land mass of India) are also liable to tax.

Service tax extends to installation, structures & vessels in Continental Shelf and Exclusivve Economic Zone :- Central Government has extended Service Tax Law to installations, structures and vessels in the contingental shelf of India and the exclusive economic zone of India for the purpose of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

☞ A Classification of Services **Section 65A**

Section 65A provides that where a taxable service is prima facie classifiable under two or more categories of service, then, classification shall be done as follows-

(a) It shall be classified under the category which provides the most specific description;

(b) In case the service is a composite service consisting of a combination of different services which cannot be classified in the manner specified in clause (a), then such service shall be classified under that category which gives them their essential character;

(c) When a service cannot be classified in the manner specified in clause (a) or clause (b), then it shall be classified under the category, which occurs first in clause (105) of section 65.

Section 65A not to apply [Section 65(105)(zn) or (zzl) or (zzm), amended by the Finance Act, 2010 w.e.f. 1-7-2010] : It has been provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within –

(a) the port; or

(b) other port; or

(c) the airport or civil enclave.

Thus, any service rendered wholly within the port, or, other port, or, the airport/civil enclave shall respectively be classified only under “Port Services”, or, “Other Port Services”, or, “Airport Services”.

Rule 6 of Service Tax (Determination of Value) Rules, 2006 - Cases in which the commission, costs, etc., will be included or excluded

(v) **the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger. (w.e.f. 27-02-2010)**

Rule 6 of Service Tax Rules, 1994 - Payment of Service Tax

(2) Method of Deposit :-

The assessee shall deposit the service tax liable to be paid by him with the bank designated by CBEC for this purpose in form GAR-7 or in any other prescribed manner.

Provided that where an assessee has paid a total service tax of Rs. 10 lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking. (w.e.f. 1-4-2010)

☞ **Furnishing of returns Section 70**

Mandatory e-filing if gross service tax liability is Rs. 10 lakhs or more (w.e.f. 1-4-2010) : Where an assessee has paid a total service tax of Rs. 10 lakh or more including the amount paid by utilisation of CENVAT credit, in preceding financial year, he shall file 'return' electronically.

EXEMPTION FROM SERVICE TAX

☞ **Exemption to service provided for transmission of electricity**
[Notification No. 11/2010-S.T. dated 27-2-2010] : The taxable service provided to any person, by any other person for transmission of electricity, is exempt from service tax.

☞ **Exemption to taxable service provided for distribution of electricity**
[Notification No. 32/2010-S.T., dated 27-2-2010] : The taxable service provided to any person, by a distribution licencee, a distribution franchisee, or any other person by whatever name called, authorized to distribute power under the Electricity Act, 2003, for distribution of electricity, is wholly exempt from service tax.

☞ **Exemption to advances received prior to 1-7-2010 towards 8 new services introduced and specified existing services expanded by Finance Act, 2010**
[Notification No. 36/2010-S.T., dated 28-6-2010] :

(i) The taxable services specified in the Finance Act, 2010 (i.e. newly introduced services and expansion / amendment of old services) are exempt to the extent of the amount of advance payment received before 1-7-2010 in respect of them.

(ii) However, any advance payment, which realtes to retrospective amendments in 'Commercial Training & Coaching Service [Section 65(105)(zzc)]' and 'Renting of Immovable Property [Section 65(105)(zzzz)]', shall not be so exempt.

[List of New Services Introduced by Finance Act, 2010 w.e.f. 1.7.2010]	
1.	Commercial use or exploitation of any event
2.	Copyright services
3.	Electricity exchange services
4.	Health services
5.	Maintenance of Medical records
6.	Promotion of Brand of goods, services, events, business entity, etc.
7.	Promotion, Marketing or organization of Games of chance including lottery
8.	Provision of preferential location or external or internal development of complexes

☞ Special rate for payment of Service Tax :-

➢ **Games of Chance Service [Section 65(105)(zzzzn)]** :-

Optional composite payment [Rule 6(7C) of the service Tax Rules, 1994]

Rate	Condition
Rs 6000/- on every Rs 10 lakh (or part of Rs 10 lakh) of aggregate face value of lottery tickets **printed** by the organising State for a draw	If the lottery scheme is one where the guaranteed prize payout is more than 80%.
Rs 9000/- on every Rs 10 lakh (or part of Rs 10 lakh) of aggregate face value of lottery tickets **printed** by the organising State for a draw.	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%.

Key Note :-

Aggregate face value of lottery tickets in case of online lottery : In case of online, the aggregate face value of lottery tickets will be the aggregate value of tickets **sold**.

Exemption to marketers of lottery, if this option availed [Not. No. 50/2010-ST, dtd. 8-10-2010] : The persons marketing the lottery tickets, other than the distributors or selling agents appointed or authorised by the lottery organising State, shall be exempt from service tax if the optional composition scheme under Rule 6(7C) is availed of by such distributor or selling agent in respect of such lottery. If no such option has been availed of any distributor or selling agent, this exemption shall not apply to the value of service provided to the distributors or selling agents who have not so opted.

IMPORTANT ANNOUNCEMENT OF ICAI
APPLICABILITY OF SERVICES FOR
MAY 2011 AND NOVEMBER 2011 EXAMINATIONS
(Announcement dated 18-11-2010 of the Board of Studies of ICAI)
Final Examinations (Both Existing and New)

	Particulars
	Taxable Services :-
1.	Intellectual property services
2.	Copyright services
3.	Banking & other financial services
4.	Asset management including portfolio management and all forms of fund mangement services.
5.	Clearing and forwarding services
6.	Tour operator's services
7.	Port service by major ports and other ports
8.	Airport services
9.	Good transport agency's services
10.	Transport of goods by air services
11.	Transport of goods by rail services
12.	Transport of air passengers service
13.	Transport of coastal goods and goods through inland water including national waterways
14.	Telecommunication services
15.	Construction of commercial or industrail buildings or civil structures
16.	Construction services in respect of residential complexes
17.	Preferential location services
18.	Erection, commissioning and installation services
19.	Services involved in the execution of a works contract
20.	Services of renting of immovable property
21.	Management, maintenance or repair services
22.	Site preparation and clearance, excavation, earthmoving and demolition services
23.	Business support services
24.	Business auxiliary services
25.	Health care services
26.	Promotion of brand services
27.	Mining Services
28.	Advertising Services

Taxable Services

(1) Intellectual property right (IPR) Service

Means : transferring temporarily, or permitting the use or enjoyment of Intellectual property right.

Includes : any right to intangible property, namely trade marks, designs, patents, or any other similar intangible property, under any law for the time being in force.

Excludes : (i) Copyright

(ii) IPR like integrated circuits or undisclosed information (not covered by Indian Law)

(iii) Permanent transfer of IPR is not a taxable service.

Exemption : Exemption in respect of Research & Development cess paid for Import of Technology.

(2) Copyright services [w.e.f. 1-7-2010]

Taxable Service [Section 65(105)zzzzt)] :

Means :

- any service provided or to be provided to any person, by any other person,
- for – (a) transferring temporarily; or (b) permitting, the use or enjoyment of,
- any copyright defined in the Copyright Act, 1957, except the rights coveredunder section 13(1)(a) of the said Act.

Indian Copyright Act, 1957	Copyright on	Service tax liability
Section 13(1)(a)	Original literary, dramatic, musical and artistic work	Non taxable service
Section 13(1)(b)	Recording of cinematographic	Taxable services
Section 13(1)(c)	Sound recordings	Taxable services

(3) Banking & Other Financial Services

Means :
- A Banking Company
- A Financial Institution (including a NBFC)
- Any other Body Corporate
- Any Other Person

Includes :

(a) The following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, namely-

(i) Financial Leasing Services (including equipment leasing and hire-purchase).

(ii) Merchant Banking Services;

(iii) Securities and foreign exchage (forex) broking, and pruchase or sale of foreign currency, including money changing;

(iv) Asset management services (including portfolio management)

(v) Advisory and other auxiliary services (including investment and portfolio research and advice)

(vi) Provision and transfer of information and data processing;

(vii) Banker to an issue service;

(viii) Other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts.

(ix) The activity of chit funds, which is in the nature of cash management.

(x) Services provided in relation to purchase or sale of foreign currency by a foreign exchange broker, money changer and authorised dealer of foreign exchange shall also be leviable to service tax.

To enable determination of taxable value, where the consideration for the services provided in realtion to purchase or sale of foreign currency is not explicitly indicated by the service provider, a method under rule 6(7B) of the Service Tax Rules, 1994 shall be prescribed. As per this provision, the service provider has the option to pay service tax calculated at the rate of 0.25% of the gross amount of currency exchanged.

Illustration :

Buying rate : US \$ 1 = Rs. 38 // Selling rate : US\$ 1 = Rs. 40

(i) Purchase of US\$ 100 by the service provider,

Gross amount of currency exchanged in rupees = Rs. 3800 (Rs. 38 x 100)

Service tax payable = Rs. 9.5 (0.25% x 3800)

(ii) Sale of US\$ 100 by the service provider :

Gross amount of currency exchanged in rupees = Rs. 4000 (Rs. 40 x 100)

Service tax payable = Rs. 10 (0.25% x 4000)

(b) Foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or a authorised dealer in foreign exchange or an authorised money changer, other than those covered under (a) above.

Excludes :

(i) Any services provided to Govt. of India or state govt. in relation of collection of any duties or taxes levied by such govt. shall be exempt.

(ii) Value of taxable service provided in relation to -

- overdraft facility;
- cash credit facility; or
- discounting of bills, bills of exchange or cheques,
- equal to interest on such overdraft, cash credit or, discount, shall be exempt if shown separately.

Exemption :

(i) Financial Leasing - On the interest charged for equipment leasing & hire purchase - 90% exemption.

(ii) Chit-business- 30% abatement.

(iii) Sale and purchase of Foreiggn currency for inter-bank transactions : The taxable service provided to a Scheduled bank, by any other Scheduled bank, in relation to inter-bank transactions of purchase and sale of foreign currency, is exempt.

(4) Asset Management including portfolio management and all forms of fund management services

Taxable service [Section 65(105)(zzzzc)] : Taxable service means –

- any service provided or to be provided to any person,
- by any person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern referred to in section 65(105)(zm)(i.e. banking and other financial services),
- in relation to asset management including portfolio management and all forms of fund management.

Note: Clarifications applicable to Banking & Other Financial Services equally applicable to this service : The asset management services provided by banking and other similar concerns are already liable to service tax under the 'Banking and other Financial Services'. The clarifications issued in respect of that service, as regards the asset management services portion, shall equally be applicable for this service as well.

(5) Clearing and forwarding agent

Means : Any person who is engaged in providing any service, connected with the clearing and forwarding operations in any manner to any other person.

Taxable Service : Means any service provided or to be perovided to any person by a clearing and forwarding agent in relation to clearing and forwarding opeartions, in any manner..

Includes : Consignment agent, Coal Merchants.

(6) Tour Operator :-

Means : Any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or the rules made thereunder.

Includes :

(i) Services provided in relation to a journey from one place to another in a tourist vehicle having contract carriage permit is leviable to service tax under tour operator service.

(ii) Public sector underdakings operating tours like ITDC.

Excludes :

(1) Service tax is not payable for tours abroad.

(2) “Tour” does not include a journey organized or arranged for use by an educational body, other than a commercial trainng or coaching centre, imparting skill or knowledge or lessons on any subject or field.

Exemption :

(i) 75% abatement of gross amount - for package tour.

[Package Tour means a tour wherein the tour operator arranges for the following also -

- Transportation
- Boarding and Lodging
- Tourist Guide and entry for monuments.]

(ii) 60% abatements of gross amount :- In case of a other than packaged tour.

(iii) 90% abatement of Gross amount :- When operator only provides booking services for accommodation.

(iv) The services provided by the tour operators undertaking point-to-point transportation of passengers in a vehicle bearing contract carriage permit is being fully exempted from service tax, provided such transportation is not in relation to tourism or conducted tours, or charter or hire.

(v) Haj & Umrah pilgrimage services exempt.

(7) Port (Major Port & Other Port) Services

"Port service" means –

- any service
- rendered within a port or other port,
- in any manner.

Taxable service in respect of "major ports" : Taxable service means any service provided or to be provided–

- to any person, by any other person,
- in relation to port services
- in a port,
- in any manner.

Services wholly rendered within the port – Always classifiable as 'port services' : The provisions of section 65A shall not apply to any service when the same is rendered wholly within the port.

Taxable service in respect of "other ports" : Taxable service means any service provided or to be provided–

- to any person, by any other person,
- in relation to port services
- in other port,
- in any manner.

Services wholly rendered within other port – Always classifiable as 'port services' : The provisions of section 65A shall not apply to any service when the same is rendered wholly within other port.

Exemption :-

(i) The following services are exempted from port services :

- Estate rentals of the port for renting accomodation
- Lease rental for land
- Repair of ship or boats or vessels belonging to the Government of India including Navy or Coast Guard or Customs but does not include Government owned Public Sector Undertakings, within the port area,
- Repair of ships or boats or vessels where such process of repair amounts to manufacture within the port area,
- Supply of water within the port area,
- Supply of electricity within the port area,
- Treatment of persons by a dispensary, hospital, nursing home or multi-speciality clinic (except cosmetic or plastic surgery service) within the port area,
- Services provided by a school or centre, to provide formal education other than those services provided by commercial coaching or training centre, within the port area.
- Services provided by fire service agencies, within the port area,
- Pollution control services, within the port area,

(ii) Airport service, Port Services or Other Port Services – Exemption to specified services provided within airport or port w.e.f. 1-7-2010 : The following services when provided wholly within the port or other port or airport are exempt from whole of the service tax leviable thereon –

- taxable service provided by a cargo handling agency in relation to, agricultural produce of goods intended to be stored in a cold storage;
- taxable service provided by storage or wharehouse keeper in relation to storage and warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage.
- taxable service in relation to transport of export goods in an aircraft by an aircraft operator;
- taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

Abatements : Abatements granted in respect of other services, which have been extended to service rendered wholly within a port, other port or airport w.e.f. 1-7-2010.

Particulars	***% of abatement***
1. Renting of a cab	60%
2. Erection, Commission & Installation Service	67%
3. Commercial or Industrial Construction Service	67% or 75%, as the case may be
4. Construction of Complex Service	67% or 75%, as the case may be
5. Transport of Goods in Containers by Rail	70%
6. Transport of Goods by Road (GTA Service)	75%

Note :

(i) Port [Section 65(81)] : Port means any "major port" to which the Major Port Trusts Act, 1963 applies.

(ii) Other Port [Section 65(76)] : "Other port" has the meaning assigned to "port" in section 3(4) of the Indian Port Act, 1908, but does not include the port defined in section 65(81) above. Hence, ports, other than major port, are covered under 'other port'.

(8) Airport services

Taxable service [Section 65(105)(zzm)] : Taxable service means –

- any service
- provided or to be provided to any person,
- by airports authority or by any other person,
- in any airport or a civil enclave.

Services wholly rendered within airport – Always classifiable as 'airport services' : The provisions of section 65A shall not apply to any service when the same is rendered wholly within the airport or civil enclave. [w.e.f 1-7-2010]

Note :

(i) Airport [Section 65(3c)] **:** "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome.

(ii) Airport Authority [Section 65(3d)] : "Airports authority" means the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994) and also includes any person having the charge of management of an airport or a civil enclave.

(iii) Civil Enclave [Section 65(24a)] : "Civil enclave" means the area, if any, allotted at an airport belonging to any armed force of the Union, for use by persons availing of any air transport service from such airport or for the handling of baggage or cargo by such service, and includes land comprising of any building and structure on such area.

(9) Transport of Goods by Road Service

Means : Any person, which provides service in relation to transport of goods by road and issues consignment note, by whatever name called, in a goods carriage.

Person liable to pay service tax :- Rule 2(1)(d) (v) -

Goods Transport Service by Goods Transport Agency-

Where Consignor or Consignee falls under any of following :-

(a) any factory registered under factories Act, 1948

(b) any company registered Under companies Act, 1956

(c) any corporation established under any law

(d) any society registered under societies Registration Act

(e) any Co-Operation Society registered Under any law

(f) any dealer of excisable goods, who is registered Under the Central Excise Act, 1944

(g) any body corporate or partnership firm registered under any law.

- the person paying the freight

Exemption :-

(i) The taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs, milk, food grains or pulses by road in a goods carraige, is fully exempt.

(ii) This service shall be 100% exempt when provided in relation to transport of goods (other than Fruits, Vegetables, Eggs, Milk, food grains or pulses) under any one of the following two situations :-

  (a) The gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs. 750.

  (b) The gross amount charged on all the consignments transported in a goods carriage does not exceed Rs. 1,500.

(iii) 75% Abatement Benefit will be available.

Issue of Consignment note Rule 4B of Service Tax Rules, 1994 :-

Any goods transport agency which provides service in relation to transport of goods by road in a goods carriage shall issue a consignment note to the customer :

Explanation :- "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage.

Which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported.

Details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

Certain services provided to goods transport agency (GTA) - Exempt [W.e.f. 5-1-2009]: The following taxable services provided by any person to a goods transport agency for use by the said goods transport agency to provide any service of 'transport of goods by road in a goods carriage' to a customer in relation to transport of goods by road, are exempt from service tax-

(a) Clearing and forwarding agent;

(b) Manpower Recruitment or Supply Agency;

(c) Cargo Handling;

(d) Storage and Warehousing;

(e) Business Auxiliary Services;

(f) Packaging Activity;

(g) Business Support Services;

(h) Supply of Tangible goods for use Service.

The exemption will be allowed subject ot the condition that the invoice issued by such service provider, providing services should memtion the name and address of the goods transport agency and also the name and date of the consignment note, by whatever name called, issued in his behalf.

(10) Transport of Goods by Air Service

Means : Any person who provides the service of transport of goods by aircraft.

Taxable Service : Means any service provided or to be provided to any person, by an aircraft operator, in relation to transport of goods by aircraft.

Includes : Actual freight charges and all charges collected towards storing, handling, loading or unloading done in relation to air transportation of cargo.

Exemption :- This service shall be 100% exempt when provided in relation to "transport of Export Cargo".

(11) Transport of Goods by Rail services

Taxable Services : Any service provided or to be provided to any person, by any other person, in relation to transport of goods by rail, in any manner.

Abatement : 70% abatement of gross amount charged.

Exemption : The taxable service provided to any person in relation to transport of goods by rail is fully exempt from service tax. However, this exemption doesn't apply to any service provided or to be provided, by any person other than government railway, in relation to transport of goods in containers by rail.

(12) Transport of Passengers for Journey (Domestic or International) by Air

Taxable Service [Section 65(105)(zzzo)] :

Means :

- provided or to be provided to any passgenger,
- by an aircraft operator,
- in relation to scheduled or non-scheduled air transport of such passenger embarking in India for domestic journey or international journey.

Exemption :

(i) Travel by Air service – Exemption to in-transit international passenger and other specified persons w.e.f. 1-7-2010 [Notification No. 25/2010-S.T.] : The taxable service of air transport of passengers, in respect of persons specified below, is exempt from the whole of the service tax leviable thereon under section 66 of the Finance Act–

(a) a person who has arrived at a customs airport from a place outside India and is in transit through India, provided that he does not pass through immigration and does not leave customs area and continues his journey to a place outside India; and

(b) a person employed or engaged by the aircraft operator in any capacity on board the aircrafts;

(ii) Travel by Air service – Exemption providing effective rate for domestic journey in any class and international journey in economy class w.e.f. 1-7-2010 [Notification No. 26/2010-S.T., dated 22-6-2010] : The taxable service is exempt from so much of the service tax as is in excess of –

Case	Service Tax payable (net of exemption)
(a) for passengers travelling in any class, within India;	10% of the gross value of the ticket or Rs. 100 per journey, whichever is less
(b) for passengers embarking in India for an international journey in economy class	10% of the gross value of the ticket or Rs. 500 per journey, whichever is less

In other words, after exemption, the service tax shall be payable at the rate specified in above table.

Exemption only if CENVAT credit not availed : This exemption shall not apply in cases where the credit of duty paid on inputs used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004.

(iii) Travel by Air service – Exemption to passengers from/to North East and Baghdogra [w.e.f. 1-7-2010].

Note :

(i) Economy Class : For the purposes of this notification, economy class in a aircraft means,–

(a) where there is more than one class of travel, the class attracting the lowest standard fare; or

(b) where there is only one class of travel, that class.

(ii) Exclusion from Value [Rule 6(2)(v)] of the Service Tax (Determination of Value) Rule 2006: The value of any taxable service, as the case may be, does not include the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger.

(iii) International journey : "International journey", in relation to a passenger, means his journey from any customs airport on board any aircraft to a place outside India.

(iv) Passenger : "Passenger", means any person boarding an aircraft in India for performing domestic journey or international journey.

(13) Transport of Coastal goods or goods through in land water including national waterways.

Taxable Service [Section 65 (105)(zzzzl)] : Taxable Service means any service provided or to be provided to any person, by any other person, in relation to transport of –

(i) coastal goods;

(ii) goods through national waterway; or

(iii) goods through inland water.

Exemption :

The following services are exempted from the service tax :

- Transportation of foodstuffs,
- Transportation of hank yarn made wholly from cotton, raw jute, seeds of food crops
- Transportation of medicine products
- Transportation of relief materials
- Transportation of defense equipments
- Transportation of luggage of passengers
- Transportation of news papers and magazines registered with the Registrar of Newspapers.

(14) Telecommunication Services

Taxable Services :–

- voice mail, data services, audio tax services, video tax services, radio paging;
- fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;
- cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the tranmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;
- carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;

- provision of call management services for a free including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic call-back, call answer, voice mail, voice menus and video conferencing;
- private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;
- data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and
- communication through facsimile, pager, telegraph and telex,
- activation charges of SIM (i.e. Short Message Service) cards
- interconnection link charges

The following services are not taxable under telecommunication services:

- any person in relation to on-line information and database access or retrieval or both
- a broadcasting agency or organization
- any person in relation to internet telecommunication service.

Exemption : Exemtion to Telephone calls made from Public Booths, Free Telephones at Airport and Hospitals : The following taxable services are exempt from the whole of service tax leviable thereon under section 66 –

(i) Departmentally run Public Telephones for local calls.

(ii) Guaranteed public telephone operating only for local calls.

(iii) Free telephone at Airports and Hospitals where no bills are being issued.

Note :

(i) Surcharge – Not Taxable

(ii) Interconnect usage charge – Taxable

(iii) International in-bound roaming – Taxable

(15) Commercial or Industrial Construction Service

Include : construction of a new building or a civil sturcture, or

construction of pipeline or conduit; or

completion and finishing services, in relation to building or civil structure; or

repair, alteration or renovation etc.

which is Used, Occupied, Engaged Primarily in, commerce or Industry.

Taxable service : Means any service provided or to be provided to any person, by any person, in relation to commercial or industrial construction.

Payment received from the buyer before completion of construction – Service [w.e.f.1-7-2010] : The construction is of a new building –

– which is intended for sale, wholly or partly.

– by a builder or any person authorised by the builder before, during or after construction

– (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue and certificate under any law for the time being in force).

Exclude : Road (construction & repair), airport, railway, transport terminal, bridge, tunnel, pipeline and dam.

Abatement :

(a) If gross amount charged includes value of materials, but not land : Abatement = 67%. For the purpose of allowing abatements, the gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service.

(b) If gross amount charged includes the value of materials and also land : Abatement = 75%. [w.e.f. 1-7-2010] : This abatement shall apply only if –

(i) the gross amount charged includes the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service.

(ii) the cost of land must have already been included in the gross amount charged.

Basic Condition - The given abatements (exemption) would be available subject to the fullfillment of 2 basic conditions :-

(i) CENVAT Cedit of Inputs, Capital Goods & Input Services is not availed; and

(ii) Benefit of E/N 12/2003 (exemption providing for value of goods & material sold from the value of taxable service) is also not availed.

Additional Condition :- The abatement in respect of construction service & would be available only if -

– The service are not exclusively of completion and finishing services.

Exemption :

Construction service in relation to port or other port - Exempt : The Central Government has exempted 'commercial or industrial construction service' provided to any person by any other person in relation to construction of port or other port, from whole of service tax leviable thereon.

However, for the purposes of this exemption, commercial or industrial construction service in relation to construction of port or other port shall not include services of completion and finishing, repair, alteration, renovation, restoration, maintenance or repair propvided in relation to existing port or other port.

Construction of canals liable to service tax only when 'commercial' :- As regards leviability of service tax on construction of canals for Government projects, the essence of definition of "commercial or industrial construction service" is that it is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. As the canal system built by the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax.

However, if the canal system is built by private agencies and is developed as a revenue generatingg measure, then such construction should be charged to service tax.

(16) Residential Complex Construction Service -

Means : *Any complex comprising of*

(i) A building or buildings, having more than 12 Resicential Units;

(ii) A common area; and

(iii) Any one or more of facilities such as park, lift, community hall, common water supply, located within a premise.

Includes : Any Service provided in relation to

Construction of residential complex, or

Completion and finishing Services in relation to residential complex such as glazing, plastering, painting, floor and wall tilling, wall covering and wall papering, carpentry, fencing and railing, construction of swimming pools, acousticc applications, or repair, alteration or renovation etc.

Excludes : A complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Abatement :

(a) If gross amount charged includes value of materials, but not land : Abatement = 67%. For the purpose of allowing abatements, the gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service.

(b) If gross amount charged includes the value of materials and also land : Abatement = 75%. [w.e.f. 1-7-2010] : This abatement shall apply only if –

(i) the gross amount charged includes the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service.

(ii) the cost of land must have already been included in the gross amount charged.

Basic Condition - The given abatements (exemption) would be available subject to the fullfillment of 2 basic conditions :-

(i) CENVAT Cedit of Inputs, Capital Goods & Input Services is not availed; and

(ii) Benefit of E/N 12/2003 (exemption providing for value of goods & material sold from the value of taxable service) is also not availed.

Additional Condition :- The abatement in respect of construction service & would be available only if -

– The service are not exclusively of completion and finishing services.

Taxability Only if contractor engaged : If builder, promoter, developer, etc. gets the complex built by engaging services of a separate contractor, such contractor shall be liable to pay service tax. However, if such builder, etc. builds the residential complex on his own by employing direct labour, no service tax can be imposed as there is no separate service provider and service recipient.

Sale of flat & construction for personal use, not taxable.

(a) If developer/builder/promoter builds up the flats/dwelling units in a residential complex as per the agreement entered into with proposed buyers of flats, then, no service tax can be imposed, as the property in the flat/unit belongs to the builder until the sale deed is exceuted in favour of the buyer. The construction carried out by builder until the execution of sale deed is on his personal account and is, therefore, in the nature of 'self-servce' not liable to tax.

(b) Even if ultimate owner enters into a contract for construction of a residential complex with a builder, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity will not be liable to service tax, because this case is specifically excluded from taxable service.

(c) However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

(17) Construction Services - Preferential Location or Development Services [w.e.f 1-07-2010]-

Taxable Services [Section 65(105)(zzzzu)] : Taxable Service means any service –

- provided or to be provided to a buyer,
- by a builder of a residential complex, or a commercial complex, or any other person authorised by such builder,
- for providing preferential location or development of such complex
- but does not include services –
  - Management, Maintenance or Repair Service,
  - Commercial or Industrial Construction Service,
  - Construction of Complex Service and
  - in relation to parking place.

Preferential Location [Explanation] : "Preferential location" means any location having extra advantage which attracts extra payment over and above the basic sale price.

(18) Erection, Commissioning or Installation Service

Means : Erection, commissioning, installation of plant, machinery, equipment or structures, whether pre-fabricatd or otherwise.

Taxable Service : Any service provided or to be provided to any person by a commissioning and instalation agency in relation to erection, commissioning or installation.

Includes : Installation of

(a) electrical and electronic devices, including wirings or fittings thereof; or

(b) plumbing, drain laying or other installations for transport of fluids; or

(c) heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work; or

(d) sound insulation, fire proofing or water proofing; or

(e) lift and escalator, fire escape staircases; or

(f) such other similar services.

Option :- In case of Composite contract of supply and installation (turnkey project) there is option to pay tax on 33% of gross amount.

Exemption : Exemption to specified food grain handling system, cold storage and agricultural processing units.

(19) Works Contract Service

Means : A contract wherein

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out -

(a) erection, commissioning or installation of plant, machinery, equipment or structures.

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit.

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration.

(e) turnkey projects.

Includes : Service provided or to be provided to any person, by any other person in relation to the execution of a works contract.

Excludes: works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Exemption : Execution of a works contract in respect of canals, other than those primarily used for the purposes of commerce or industry, exempts from the whole of service tax.

Service Tax (Determination of Value) Rules, 2006

Rule 2A

Valuation of works contract service- The value of taxable service in relation to services involved in the execution of a works contract shall be determined by the service provider in the following manner-

Value of works contract service = Gross amount charged for the works contract less Value of transfer of property in goods involved in the execution of the said works contract.

Note: For the purposes of the above formula,-

(1) Value of transfer of property in goods involved in execution of works contract: Where value Added Tax or sales tax has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract.

(2) Gross amount charged: Gross amount charged for the works contract shall not include value added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

(3) Value of works contract service: Value of works contract service shall include,-

(a) labour charges for execution of the works;

(b) amount paid to a sub-contractor for labour and services;

(c) charges for planning, designing and architect's fees;

(d) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(e) cost of consumables such as water, electricity, fuel, used in execution of works contract;

(f) cost of establishment of the contractor relatable to supply of labour and services;

(g) other similar expenses relatable to supply of labour and service; and

(h) profit earned by the service provider relatable to supply of labour and services

No CENVAT credit of duty paid on goods, which do not form part of value of taxable service: Since value of works contract service does not include the value pertaining to transfer of property in 'goods' involved in the execution of a works contract livable to VAT/sales tax, therefore, a works contract service provider is not eligible to take credit of excise duty paid on such ' goods'.

- **Special rate for payment of Service tax :-** Composition Amount @ 4% of gross amount charged [works contract (Composition Schemen for payment of Service Tax) Rules, 2007]:

  These rules provide for composite payment of service tax. The person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liablility on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount exuivalent to 4% of the gross amount charged for the works contract.

  - Gross amount charged : For this purpose, gross amount charged for the works contract shall -

    (a) Include :

    (i) the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and

(ii) the value of all the services that are required to be provided for the execution of the works contract;

(b) Exclude :

(i) the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and

(ii) the cost of machinery and tools used in the execution of the said works contract except for the charges for obtaining them on hire.

- **No CENVAT credit on inputs** :- The provided of taxable serevice, opting for this option, 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.

  Therefore, in absence of any restriction, Cenvat credit of duty paid on capital goods and service tax paid on input services can be taken by a service provider opting for composition scheme.

- **Exercise of option** :- The providere of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of sercice tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

- **Option permissible only when gross amount charged correctly declared** :- The option under these Rules shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.

(20) Renting of immovable property :-

Taxable Services :

- any service provided or to be provided to any person,
- by any other person,
- by renting of immovable property or any other service in relation to such renting,
- for use in the course of or, for furtherance of, business or commerce.

Includes : renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce.

Excludes :

(i) renting of immovable property by a religious body or to a religious body; or

(ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Explanation : For the purposes of this sub-clause, "immovable property" includes -

(i) building and part of a building, and the land appurtenant.

(ii) land incidental to the use of such building or part of a building;

(iii) the common or shared areas and facilities relating thereto; and

(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate.

(v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce; (Inserted by the Finance Act, 2010 w.e.f.-1-7-2010].

But does not include -

(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;

(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;

(c) land used for educational, sports, circus, entertainment and parking purposes and

(d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Exemption : Property Tax levied and collected by local bodies - Whole of property tax and pro-rata basis excluding interest / penalty.

Note :

(i) "For use in the course or furterance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

(ii) "Renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property.

(iii) Immovable property used partly commercially and partly for residence - Deemed to be used commercially : An immovable property partly for use in the course or furtherance of business or commerce and partly for residental or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce.

(iv) Service Tax on Movie Theatres :- Screening of a movie is not a taxable service except where the film distributor leases out the theater and the theater owner get a fixed rent. In such case, the service provided by the theater owner would be categorized as 'Renting of immovable property for furtherance of business or commerce' and the theater owner would be liable to pay tax on the rent received from the distributor.

(21) Management, Maintenance or Repair Service

Management maintenance or repair [Section 65(64)] : "Management, maintenance or repair means any service provided by –

(i) any person under a contract or an agreement; or

(ii) a manufacturer or any person authorised by him

in relation to,–

(a) management of properties,whether immovable or not;

(b) maintenance or repair of properties, whether immovable or not; or

(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle.

Explanation – for the removal of doubts, it is hereby declared that –

(a) "goods" includes computer software;

(b) "properties" includes information technology software.

Taxable Service [Section 65(105)(zzg)] : Taxable Service means any service provided or to be provided to any person by any person in relation to management, maintenance or repair.

Exemption :

Exemption from Service Tax to management, maintenance or repair of roads : The taxable service provided to any person by any other person in relation to management, maintenance or repair of roads, is exempt from the whole of the service tax leviable thereon.

(22) Site Formation And Clearance

Means : Site formation and clearance, excavation and earthmoving and demolition.

Includes : Drilling, boring, soil stabilization, land reclamation work, demolition and wrecking of building.

Excludes : Services provided in relation to agriculture, irrigation and drilling, digging, repairing, renovation or restoring of water sources.

services provided in the course of construction of roads, airports, railways, transport, terminals, bridges, tunnels, and dams, major and minor ports are exempt from service tax.

(23) Business Support Services

Means : Services provided in relation to business or commerce

Taxable Service : Means any service provided or to be provide to any person, by any other person in relatin to managing the public relations of such person, in any manner.

Includes : Telemarketing

- Processing of purchase orders and fulfillment services,
- Information and tracking of delivery schedules,
- Managing distribution
- Customer relationship
- Accounting and processing of transaction, and
- Infrastructural support services such as providing office along with office utilities, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security.

(24) Business Auxiliary Service

Means : Any service in relation to --

(i) Promotion or marketing or sale of goods produced or provided by or belonging to client,

(ii) Promotion or marketing of service provided by the client,

(iii) Any customer care service provided on behalf of the client

(iv) Procurement of goods or services, which are inputs for the client,

(v) Production or processing of goods for, or on behalf of, the client (where such processing does not amount to manufacture of Excisable goods.

(vi) Provision of service on behalf of the client.

(vii) any incidental or auxiliary support service such as billing, collection, recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development or prospective customer or vendor, public relation services, management or supervision.

Includes :

(1) Services as a commission agent

Commission agent means any person who acts on behalf of another person and causes sale or purchase of goods or provision of service and includes person who

(i) deals with goods or services or documents of title; or

(ii) collects payment of sale price; or

(iii) guarantees for collection or payment; or

(iv) undertakes any activities relating to such sale or purchase.

(2) Contract Manufacturing Arrangement - Liable to service tax : Under this arrangement, the Brand Owner gets alcoholic beverages manufactured by job-workers, the property, risk and rewards of the products so manufactured rest with Brand Owner. Since'alcohol' is not a 'excisable goods' under Central Excise Act, 1944 i.e. it is not liable to central excise duty (it is liable to state excise duty), hence, services in relation to such manufacture will be liable to service tax under Business Auxiliary Service.

Excludes :

(i) Does not include manufacture of Excisable goods.

[The expression "excisable goods" shall have the meaning assigned to it the Central Excise Act, 1944]

(ii) Lotteries, etc – Not Taxable under this service, taxable as separate service.

Exemption :-

(i) Processing services of Job-worker in relation to

Agriculture, Printing, Textile Processing, Education are 100% exempt.

(ii) Processing services of Job-worker in relation to

- cut and polished diamonds and gem stones; or
- Jewellery of Gold and other precious metals are 100% exempt.

(iii) When after processed goods are returned to the supplier and the supplier will be using the processing goods for use in or in relation to manufacture of "excisable goods which are dutiable also"

- Then, Jobworker can claim 100% exemption.

(iv) In relation to production or processing of parts and accessories used in the manufacture of cycles, cycle rickshaws and hand-operated sewing machines, for or on behalf of the client - 30% exemption.

(v) Value of inputs used in providing services in course of manufacture or processing of alcoholic beverages :- The taxable service provided by a person to any other person during the course of manufacture or processing of alcoholic beverages by the servicce provider, for or on behalf of the service receiver, is exempt from service tax from so much of value which is equivalent to the value of inputs, excluding capital goods, used for providing the same service, subject to the following conditions -

(a) that no Cenvat credit has been taken under the provisions of Cenvat Credit Rules, 2004;

(b) that there is documentary proof specifically indicating the vlaue of such inputs; and

(c) where the service provider also manufactures or processes alcoholic bevverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accountts of receipt, production, inventory, despatche of goods as well as financial transactions relating thereto.

(vi) Services provided by news agency eligible for Income-tax exemption – Exempt [Notification No. 13/2010-ST, dated 27-2-2010] : Taxable services provided by any Indian news agency is exempt, subject to u/s 10(22B) of the Income Tax Act, 1961; and

(i) if such new agency is notified as a news agency set up in India solely for collection and distribution of news. In addition, this exemption shall be available only to news agencies which are specified u/s 10(22B) of the Income Tax Act, 1961; and

(ii) such news agency applies its income or accumulates it for collection and distribution of news and does not distribute its income in any manner to its members.

(25) Health Check-up Services [w.e.f 1-7-2010]

Taxable Service [Section 65(105)(zzzzo)] : Taxable services means any service provided or to be provided by any hospital, nursing home or multi-speciality clinic, –

(i) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-speciality clinic; or

(ii) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-speciality clinic.

Business entity [Section (19b)] : "Business entity" includes an association of persons, body of individuals, company or firm but does not include an individual.

Includes :

(i) Corporate Health Checkup

(ii) Health Insurance Schemes by insurance companies

Excludes : Direct payment by individuals

(26) Brand Promotion Service [w.e.f 1-7-2010] –

Taxable Service [Section 65(105)(zzzzq)] : Taxable services means any service –

- provided or to be provided to any person,
- by any other person, through a business entity or otherwise,
- under a contract
- for promotion or marketing of a brand of goods, service, event or endorsement of name, including a trade name, logo or house mark of a business entity
- by –
  - appearing in advertisement and promotional event or
  - carrying out any promotional activity for such goods, service or event

Note :

(i) Meaning of Brand : "Brand" includes symbol, monogram, label, signature or invented words which indicate connection with the said goods, service, event or business entity.

(ii) Meaning of Business entity : "Business entity" includes an association of persons, body of individuals, company or firm but does not include an individual.

(27) Mining of Mineral, Oil or Gas Service –

Taxable service [Section 65(105)(zzzy)] :

Taxable service means any service –

- provided or to be provided to any person, by any other person
- in relation to mining of mineral, oil or gas.

All services in relation to exploration or exploration covered :-

Services provided in relation to both exploration and exploitation of mineral, oil or gas will be comprehensively brought under the service tax net. Hence, the following shall be taxable under this service and will not be classified individually under the separate taxable services to which they relate –

- Geological, geophysical or other prospecting, surface or sub-surface surveying or map-making services relating to location or exploration of deposits of mineral, oil or gas;

- Site formation and clearance, and excavation and earth moving, drilling wells for production/ explotation of hydrocarbons (development drilling) provided for mining;
- Well testing and analysis services provided for mining;
- Sub-contracted services such as deploying workers and machinery for extraction/breaking of rocks into stones, sieving, grading, etc. provided for mining
- Outsourced services provided for mining, etc.

(28) Advertising Services –

Taxable Services :- Taxable Service means any service

- provided or to be provided to any person
- by an advertising agency
- in relation to advertisement
- in any manner.

Advertising Agency [Section 65(3)] : Advertising Agency means –

- any person engaged in providing any service connected with making, preparation, display or exhibition of advertisement and
- includes an advertising consultant.

Advertising [Section 65(2)] : Advertising includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.

Note :

(i) Documentary films : In many cases, advertising agency gets a documentary or film prepared by an independent film producer on behalf of the client. In such cases, the expenses incurred on getting the film or documentary produced on behalf of the client should be included in the value of taxable service by the advertising agency. In case the film producers choose to charge the client directly, then the film producers will be liable to pay Service Tax accordingly.

(ii) Telephone Directories, etc. : Telephone directories etc. related services are separately liable to service tax under 'Sale of space or time for advertisement' service.

(iii) Selling Free Commercial Time to advertising agencies : It is taxable as 'sale of space or time for advertisement' service.

SERVICE TAX CASE LAWS

Rule 4A of Service Tax Rules, 1994 –

Karamchand Thapar & Bros. (Coal Sales) Ltd. v. UOI [2010](Cal.)

The assessee applied for centralised registration under 'Business Auxiliary Service'; while the Commissioner granted registration under 'Clearing & Forwarding Agent' Service by his order passed after expiry of few months from the date on which application was made by the assessee. The assessee contended that the Commissioner couldn't grant registration under different category than that applied for; and after expiry of seven days from the date of application the registration should be demed to have been granted.

Conclusion : Time limit of seven days – There is no time limit for such registration by the commissioner. Hence Commissioner should grant registration only under 'Business Auxiliary Service' as applied for by the applicant-assessee within reasonable time.

CCEx. v. Idea Mobile Communication Ltd. [2010] (Ker.)

SIM CARDS – Value of SIM CARDS not liable to sales tax (It is liable to service tax).