FINANCE BILL 2008-09

RELEVANT PROVISIONS

RELATED TO

SERVICE TAX

CA,ATUL KUMAR GUPTA

APRA & ASSOCIATES

Mobile : 9810103611

A. Changes will effective from date of notification after enactment of Finance Bill 2008

New Taxable Services

1. Services rendered by processing and clearing house in relation to processing, clearing and settlement of transaction in securities, goods or forward contracts.
2. Service rendered in relation to Management of Investment (Unit Linked Plans) becomes taxable.
3. Right to Use Services (except those taxable under VAT) becomes taxable.
4. Services provided by Recognized Stock Exchange in relation to Securities.
5. Services provided by a recognized association or a registered association (commodity exchange) in relation to sale or purchase of any goods or forward contracts.
6. Information Technology Software Services become taxable.
7. Services rendered in relation to internet telecommunication.

Scope of following services expanded

1. Authorized Money Changer becomes Taxable
2. Information technology service becomes taxable.
3. Cargo Handling Services now included packing activity also.
4. Testing and analysis, inspection services related to Information Technology Software become taxable.
5. Consulting engineer services provided to any person related to computer software become taxable.
6. Tour operator in contract carriage become taxable except Tour conducted in a stage carriage permit granted under Motor Vehicle Act, 1988 and tour conducted by Educational body except commercial Coaching and Training centre.
7. For 39 services word used “To a client or customer” replaced with “to a person”.

B Changes effective from 1st April 2008

Increase in Threshold Limit

- Increase in threshold limit for Small Scale service provider increased from 8 Lakhs to 10 Lakhs.

Amendment in CENVAT Credit Rule 2004

1. To provide output services, now Capital goods can be removed from factory without any time limit.
2. For assessee not maintaining separate accounts and providing both taxable and exempted services, now have two options (Rule 6)
    a. Either to reverse the credit attributable to input services and input used to provide exempted services (to be worked out in manner prescribed).
    b. Pay 8% on amount of value for exempted services.
3. Insert a New Rule 7A to claim CENVAT Credit on invoice issued by other office of the assessee.
4. New Service Tax Dispute Resolution scheme for tax demand of less than Rs. 25000/- between July 2008 to September 2008. (Details attached).
5. Goods Transport Agency Services excluded from the definition of "Output Services".

C Changes Effective from 1St March 2008

Exemption from Service Tax

1. Services provided in relation to booking of Hotel accommodation in India, by a person outside India to a customer located outside India.
2. 75% of the gross amount charged on GTA Services without any conditions. (Earlier it was through Notification No. 1/2006 with certain conditions).

Other Important Amendments

1. Inserted Rule 6(IA) for adjustment of advance tax paid.
2. Enhanced limit of self adjustment from Rs. 50000/- to Rs. 1,00,000/- under Rule 6(4B)(iii).
3. Enhance the day from 60 to 90 for filling of revised return.
4. Empower the Central Excise Officer to reduce or waive off penalty in case of late return of NIL income.
5. Under Export of Services, the following services will be treated as export of services even if provided through internet or electronic network, (in relation to goods, material or immovable property) namely
    a. Management, maintenance or repair services
    b. Technical testing and analysis services.
    c. Technical inspection or certification services.
6. Similarly these services will become taxable under reverse charges method in Import of Services.
7. Rate of Tax under composition scheme of Works Contract increased from 2% to 4%.

D Applicable from date of enactment of Finance Bill 2007

Amendment in Act and Rules

1. Books Adjustment within Associated enterprises will also be taxable under Determination of Value Rules. **Associated Enterprises as defined in** Section 92A of the Income Tax Act, "The enterprises will be taken to be associated enterprises if one enterprise is controlled by the other, or both enterprises are controlled by a common third person. The concept of control adopted in the legislation extends not only to control through holding shares or voting power or the power to appoint the management of an enterprise, but also through debt, blood relationships, and control over various components of the business activity

performed by the taxpayer such as control over raw materials, sales and intangibles".

2. New Service Tax Preparer Scheme in Service Tax under Section 71.
3. Best Judgment assessment reintroduced through Section 72.
4. New Penalty under Section 77
    a. Penalty for Non Registration will be Rs. 5000 or Rs. 200/- per day whichever is higher.
    b. Fails to maintain and retain books of accounts will have penalty of Rs. 5000/-.
    c. Fails to furnish information, produce documents and appear on summon will be liable to penalize a sum of Rs. 5000/- or Rs. 200/- per day whichever is higher.
    d. Fails to pay tax electronically (if mandatory) will have a penalty of Rs. 5000/-
    e. Issue incorrect/incomplete invoice will be penalized by Rs. 5000/-
    f. Any other contravention not prescribed in law will be penalized by Rs. 5000/-
5. If penalty under Section 78 is payable, then, provisions of Section 76 will not apply.

Finance Bill Clarifies

1. The Service in relation to Business Auxiliary Service includes the services provided in relation to game of chance, organized, conducted or promoted by client, like lottery, bingo.
2. Renting of Immovable property become taxable irrespective of that the transfer of possession or control happened or not.
3. Information technology software classified as "properties" and their maintenance etc will be taxable under Management, maintenance and repair services.

Definition of New Services

1. **Authorised Money Changing Service**

   a. securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;”

   b. foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer, other than those covered under sub-clause (*a*);”;

   Explanation.— For the purposes of this clause, it is hereby declared that “purchase or sale of foreign currency, including money changing” includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately;’

2. **Lottery Services**

   service in relation to promotion or marketing of service provided by the client” includes any service provided in relation to promotion or marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo.

3. New Definition of Cargo Handling Services

Cargo Handling Service means loading, unloading, packing or unpacking of cargo and includes:

(*a*) cargo handling services provided for freight in special containers or for non containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and

(*b*) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking, but does not include, handling of export cargo or passenger baggage or mere transportation of goods.

4. **Information Technology Software Service"**

To any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including,—

(*i*) development of information technology software,

(*ii*) study, analysis, design and programming of information technology software,

(*iii*) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,

(*iv*) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software,

(*v*) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,

(*vi*) acquiring the right to use information technology software supplied electronically;

5. **Internet Telecommunication Service**

It" includes,—

a) internet backbone services, including carrier services of internet traffic by one Internet Service Provider to another Internet Service Provider,
b) internet access services, including provision of a direct connection to the internet and space for the customer's web page,

c) provision of telecommunication services, including fax, telephony, audio conferencing and video conferencing, over the internet.

6. Processing and clearing House

"Processing and clearing house" means any person including the clearing corporation authorized or assigned by a recognized stock exchange, recognized association or a registered association to perform the duties and functions of a clearing house in relation to:

(*i*)the periodical settlement of contracts for, or relating to, the sale or purchase of securities, goods or forward contracts and differences there under;

(*ii*) the delivery of, and payment for, securities, goods or forward contracts;

(*iii*) any other matter incidental to, or connected with, securities, goods and forward contracts;

7. New Definition of Consulting Engineer

To any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering.

Explanation. For the purposes of this sub-clause, it is hereby declared that services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this sub-clause.

8. **Services in relation to Investment management(ULIP)**

To a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

Explanation: For the purposes of this sub-clause,—

(i) management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service

provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business; and

(ii) the gross amount charged by the insurer from the policy holder for the said services provided or to be provided shall be equivalent to the difference between-

a. premium paid by the policy holder for the Unit Linked Insurance Plan policy; and
b. the sum of premium paid for or attributable to risk cover, whether for life,health or other specified purposes, and the amount segregated for actual investment.

Illustration

Total premium paid for the Unit Linked Insurance Plan policy = Rs.100

Risk premium = Rs. 10

Amount actually invested = Rs. 85

Gross amount charged for the service provided = Rs. 5 [100-(10+85)];

(*iii*) in addition to the amount referred to in clause (*ii*), the gross amount charged shall include any amount charged subsequently, whether or not periodically, by the insurer from the policy holder in relation to management of investment under unit linked insurance business;

9. **Tour Operator (new Definition)**

"tour operator" means any person engaged in the business of planning, scheduling, organising 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.

Explanation: For the purposes of this clause, the expression "tour" does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field.

10. **Recognised Stock Exchange (securities) Services**

"to any person, by a recognised stock exchange in relation to assisting, regulating or controlling the business of buying, selling or dealing in securities and includes services provided in relation to trading, processing, clearing and settlement of transactions in securities";

11. **Recognised Stock Exchange (securities) Services**

"to any person, by a recognised association or a registered association in relation to assisting, regulating or controlling the business of the sale or purchase of any goods or forward contracts and includes services provided in relation to trading, processing, clearing and settlement of transactions in goods or forward contracts";

12. **Processing and Clearing House Services**

"to any person, by a processing and clearinghouse in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts including any other matter incidental to, or connected with, such securities, goods and forward contracts".

Relevant Extract of Finance Bill

SERVICE TAX

85. In the Finance Act, 1994,—

(*A*) in section 65, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint,—

(*1*) after clause (*7a*), the following clause shall be inserted, namely:—

'(*7b*) "associated enterprise" has the meaning assigned to it in section 92A of the Income tax Act, 1961;';

(*2*) in clause (*12*),—

(*a*) in sub-clause (*a*), for item (*iv*), the following item shall be substituted, namely:—

''(*iv*) securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;";

(*b*) for sub-clause (*b*), the following sub-clause shall be substituted, namely:

''(*b*) foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer, other than those covered under sub-clause (*a*);";

(*c*) after sub-clause (*b*) as so amended, the following *Explanation* shall be inserted at the end, namely:—

'*Explanation*.— For the purposes of this clause, it is hereby declared that "purchase or sale of foreign currency, including money changing" includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately;';

(*3*) in clause (*19*),—

(*a*) in sub-clause (*ii*), the following *Explanation* shall be inserted at the end, namely:—

'*Explanation*.— For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo;';

(*b*) the words "any information technology service and" shall be omitted;

(*c*) in the *Explanation*, clause (*b*) shall be omitted;

(*4*) for clause (*23*), the following clause shall be substituted, namely:—

'(*23*) "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes,—

(*a*) cargo handling services provided for freight in special containers or for non containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and

(*b*) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking, but does not include, handling of export cargo or passenger baggage or mere transportation of goods;';

(*5*) in clause (*31*), for the words "to a client", the words "to any person" shall be substituted;

(*6*) after clause (*53*), the following clause shall be inserted, namely:—
'(*53a*) "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;';

(*7*) for clause (*57a*), the following clause shall be substituted, namely:—
'(*57a*) "internet telecommunication service" includes,—
(*i*) internet backbone services, including carrier services of internet traffic by one Internet Service Provider to another Internet Service Provider, (*ii*) internet access services, including provision of a direct connection to the internet and space for the customer's web page,
(*iii*) provision of telecommunication services, including fax, telephony, audio conferencing and video conferencing, over the internet;';

(*8*) in clause (*64*), for the *Explanation*, the following *Explanation* shall be substituted, namely:—
'*Explanation.*— For the removal of doubts, it is hereby declared that for the purposes of this clause,—
(*a*) "goods" includes computer software;
(*b*) "properties" includes information technology software;';

(*9*) in clause (*68*), for the words "to a client", the words "to any other person" shall be substituted;

(*10*) in clause (*75*), for the words "to a customer", the words "to any person" shall be substituted;

(*11*) after clause (*86c*), the following clause shall be inserted, namely:—
'(*86d*) "processing and clearing house" means any person including the clearing corporation authorised or assigned by a recognised stock exchange, recognised association or a registered association to perform the duties and functions of a clearing house in relation to,—
(*i*) the periodical settlement of contracts for, or relating to, the sale or purchase of securities, goods or forward contracts and differences thereunder;
(*ii*) the delivery of, and payment for, securities, goods or forward contracts;
(*iii*) any other matter incidental to, or connected with, securities, goods and forward contracts;';

(*12*) in clause (*90a*), the *Explanation* occurring at the end shall be numbered as *Explanation 1* thereof, and after the *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:
'*Explanation 2.*— For the removal of doubts, it is hereby declared that for the purposes of this clause "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;';

(*13*) in clause (*92*), for the words "to a client", the words "to any person" shall be substituted;

(*14*) in clause (*105*),—

(*a*) in sub-clauses (*e*), (*h*), (*j*), (*k*), (*p*), (*q*), (*r*), (*s*), (*t*), (*u*), (*v*), (*w*), (*x*), (*y*), (*z*), (*za*), (*zc*), (*zi*),(*zj*), (*zu*), (*zzt*) and (*zzw*), for the words "to a client", occurring at the beginning, the words "to any person" shall be substituted;

(*b*) in sub-clauses (*f*), (*l*), (*zb*), (*zh*), (*zm*), (*zo*), (*zq*), (*zt*), (*zz*), (*zzd*), (*zzg*), (*zzp*), (*zzv*) and (*zzx*), for the words "to a customer", occurring at the beginning, the words "to any person" shall be substituted;

(*c*) for sub-clause (*g*), the following sub-clause shall be substituted, namely:—

"(*g*) to any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering.

Explanation.— For the purposes of this sub-clause, it is hereby declared that services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this sub-clause;";

(*d*) in sub-clause (*m*), for the words "a client" and "the client", wherever they occur, the words "any person" and "such person" shall respectively be substituted;

(*e*) for sub-clause (*zzk*), the following sub-clause shall be substituted, namely:—

"(*zzk*) to any person, by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorised money changer, other than a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern referred to in sub-clause (*zm*);";

(*f*) in sub-clause (*zzzu*), for the words "internet telephony", the words "internet telecommunication service" shall be substituted;

(*g*) after sub-clause (*zzzzd*), the following sub-clauses shall be inserted, namely:—

"(*zzzze*) to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including-

(*i*) development of information technology software,

(*ii*) study, analysis, design and programming of information technology software,

(*iii*) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,

(*iv*) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software,

(*v*) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,

(*vi*) acquiring the right to use information technology software supplied electronically;

(*zzzzf*) to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

Explanation.— For the purposes of this sub-clause,—

(*i*) management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business; and (*ii*) the gross amount charged by the insurer from the policy holder for the said services provided or to be provided shall be equivalent to the difference between,—

(*a*) premium paid by the policy holder for the Unit Linked Insurance Plan policy; and

(*b*) the sum of premium paid for or attributable to risk cover, whether for life, health or other specified purposes, and the amount segregated for actual investment.

Illustration

Total premium paid for the Unit Linked Insurance Plan policy = Rs.100

Risk premium = Rs. 10

Amount actually invested = Rs. 85

Gross amount charged for the service provided = Rs. 5 [100-(10+85)];

(*iii*) in addition to the amount referred to in clause (*ii*), the gross amount charged shall include any amount charged subsequently, whether or not periodically, by the insurer from the policy holder in relation to management of investment under unit linked insurance business;

(*zzzzg*) to any person, by a recognised stock exchange in relation to assisting, regulating or controlling the business of buying, selling or dealing in securities and includes services provided in relation to trading, processing, clearing and settlement of transactions in securities;

(*zzzzh*) to any person, by a recognised association or a registered association in relation to assisting, regulating or controlling the business of the sale or purchase of any goods or forward contracts and includes services provided in relation to trading, processing, clearing and settlement of transactions in goods or forward contracts;

(*zzzzi*) to any person, by a processing and clearinghouse in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts including any other matter incidental to, or connected with, such securities, goods and forward contracts;

(*zzzzj*) to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances;";

(*15*) in clause (*106*), after the words ''goods or material or'', the words "information technology software or" shall be inserted;

(*16*) in clause (*108*), for the words ''process or material'', at both the places where they occur, the words ''process or material or information technology software'' shall be subsituted;

(*17*) in clause (*109a*), in sub-clause (*c*), for the words "internet telephony", the words "internet telecommunication service" shall be substituted;

(*18*) for clause (*115*), the following clause shall be substituted, namely:—

'(*115*) "tour operator" means any person engaged in the business of planning, scheduling, organising 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.

Explanation.— For the purposes of this clause, the expression “tour” does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field;’;

(*B*) in section 66, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for the word, brackets and letters “and (*zzzzd*)”, the brackets, letters and word “(*zzzzd*), (*zzzze*), (*zzzzf*), (*zzzzg*), (*zzzzh*), (*zzzzi*) and (*zzzzj*)” shall be substituted;

(*C*) in section 67, in the *Explanation*, in clause (*c*), for the words “book adjustment.”, the following words shall be substituted, namely:—

‘book adjustment, and any amount credited or debited, as the case may be, to any account, whether called “Suspense account” or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.’;

(*D*) after section 70, the following sections shall be inserted, namely:—

‘71. (*1*) Without prejudice to the provisions of section 70, the Board may, by notification in the Official Gazette, frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70, and authorise a Service Tax Return Preparer to act as such under the Scheme.

(*2*) A Service Tax Return Preparer shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.

(*3*) For the purposes of this section,—

(*a*) “Service Tax Return Preparer” means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section;

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

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

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

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

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

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

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

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

72. If any person, liable to pay service tax,—

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

(*b*) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.';

(*E*) for section 77, the following section shall be substituted, namely:—

"77**.** (*1*) Any person,—

(*a*) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

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

(*c*) who fails to—

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

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

(*iii*) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,shall be liable to a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

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

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

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

(*F*) in section 78, after the fourth proviso, the following proviso shall be inserted, namely:—

''Provided also that if the penalty is payable under this section, the provisions of section 76 shall not apply.";

(*G*) in section 83, after the figures and letter "35F", the figures and letters "35FF," shall be inserted;

(*H*) in section 86,—

(*i*) in sub-section (*2*), the following proviso shall be inserted at the end, namely:—

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

(*ii*) in sub-section (*2A*), the following proviso and *Explanation* shall be inserted at the end, namely:—
'Provided that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.
Explanation.— For the purposes of this sub-section, "jurisdictional Chief Commissioner" means the Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.';

(*I*) in section 94, in sub-section (*4*), for the words "Chapter and every notification", the words and figures "Chapter, Scheme framed under section 71 and every notification" shall be substituted.

(*J*) in section 95, after sub-section (*1D*), the following sub-section shall be inserted, namely-
''(*1E*) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2008, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:
Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2008 receives the assent of the President.".

SERVICE TAX DISPUTE RESOLUTION SCHEME, 2008

86. (*1*) This Scheme may be called the Service Tax Dispute Resolution Scheme, 2008.

(*2*) It shall come into force on the 1st day of July, 2008.

87. In this Scheme, unless the context otherwise requires,—

(*a*) "Chapter" means Chapter V of the Finance Act, 1994;

(*b*) "designated authority" means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;

(*c*) "person" means any person against whom any tax arrear is pending;

(*d*) ''prescribed'' means prescribed by rules made under this Scheme;

(*e*) "tax arrear" means service tax, cess, interest or penalty due or payable or leviable under the Chapter but not paid as on the 1st day of March, 2008, in respect of which,—

(*i*) an order has been passed under the Chapter; or

(*ii*) a demand notice or a show cause notice has been issued on or before the 1st day of March, 2008 under the Chapter;

(*f*) all other words and expressions used herein and not defined but defined in the Chapter or the rules made thereunder, shall have the meanings respectively assigned to them in the Chapter or the rules made thereunder.

88. This Scheme shall not be applicable to a decision, an order of determination, a demand notice or, as the case may be, show cause notice,—

(*i*) relating to a tax arrear which includes service tax, and such service tax amount is in excess of twenty-five thousand rupees; or

(*ii*) where such order or notice has been made or issued under section 73A of the Finance Act,1994.

89. Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of July, 2008, but on or before the 30th day of September, 2008, a declaration to the designated authority in accordance with the provisions of section 90 in respect of tax arrear, then notwithstanding anything contained in the Chapter, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder, namely:—

(*a*) where the tax arrear has arisen due to determination, assessment or, as the case may be, order of an adjudicating authority,—

(*i*) such tax arrear includes the amount of service tax not exceeding twenty-five thousand rupees, at the rate of fifty per cent. of service tax amount;

(*ii*) such tax arrear consists of only interest payable, or penalty levied or both, under the Chapter, at the rate of twenty-five per cent. of such tax arrear:

Provided that, if the amount of penalty levied exceeds the service tax amount to which it relates, service tax amount shall be considered to be the amount of penalty;

(*b*) where the tax arrear has arisen due to show cause notice or demand notice, as the case may be,—

(*i*) such tax arrear includes the amount of service tax not exceeding twenty-five thousand rupees, at the rate of fifty per cent. of service tax amount;

(*ii*) such tax arrear consists of only interest payable, or penalty leviable or both, under the Chapter, at the rate of twenty-five per cent. of the maximum penalty leviable and interest payable:

Provided that if the amount of penalty leviable exceeds the service tax amount to which it relates, service tax amount shall be considered to be the amount of penalty.

90. A declaration under section 89 shall be made to the designated authority and shall be in such form and shall be verified in such manner as may be prescribed.

91. (*1*) Within fifteen days from the date of receipt of the declaration under section 89, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of this Scheme:

Provided that where any material particular furnished in the declaration is found to be false, by the designated authority at any stage, it shall be deemed never to have been made and all the pending proceeding under the Chapter shall be deemed to have been revived.

(*2*) The declarant shall pay, the sum determined by the designated authority within thirty days of the order by the designated authority under sub-section (*1*) and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon issue a certificate to the declarant in such form as may be prescribed.

(*3*) Every order passed under sub-section (*1*), determining the sum payable under this Scheme, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Chapter.

(*4*) Where the declarant has filed an appeal, reference or a reply to the show cause notice against any order or notice giving rise to the tax arrear before any authority, tribunal or court, then, notwithstanding anything contained in any other provision of the Chapter, such appeal, reference, or reply shall be deemed to have been withdrawn:

Provided that where the declarant has filed a writ petition, appeal or reference before any High Court or the Supreme Court against any order in respect of the tax arrear, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, furnish proof of such withdrawal along with the intimation referred to in sub-section (*2*).

92. No appellate authority shall proceed to decide any issue relating to the tax arrear specified in the declaration and in respect of which an order has been made under section 91 by the designated authority.

93. Any amount paid in pursuance of a declaration made under section 89 shall not be refundable under any circumstances.

94. For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (*3*) of section 91, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

95. (*1*) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

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

96. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(*2*) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the form in which a declaration may be made under section 90 and the manner in which such declaration may be verified;

(*b*) the form of certificate which may be issued under sub-section (*2*) of section 91;

(*c*) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

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