

PAPER - 8 : INDIRECT TAXES

QUESTIONS

EXCISE

Manufacture

1. Parsavnath Furnishers Limited (PFL) is engaged in procuring the duty paid Office Furniture System/Work Stations (OFS/WS) from the suppliers and erecting and installing them at site of customers, from whom it has procured the orders. After receiving the orders from its clients, a team of engineers prepares a lay out on computer aided design system where ready-made furniture systems and work stations manufactured by independent manufactures/suppliers are superimposed. Thereafter, based on the clients' specifications, orders are placed upon the manufacturer of the furniture for each works station. After procuring the various elements of furniture system from the manufacturer, they join the same together according to the site drawing and the project code.

The assessee contends that that they are only marketing OFS/WS. However, the Revenue alleges that PFL is liable to pay duty as the said activity amounts to manufacture.

Examine, with reference to a decided case law, if any, whether the Revenue's allegation is tenable in law?

Power of arrest under excise

2. Briefly explain the power of arrest under section 13 and section 18 of the Central Excise Act, 1944.

Appeal

3. The CESTAT passed its order on 01.01.2008. The assessee filed the application for rectification of a mistake apparent from the record in the said order on 23.05.2008. However, the Tribunal could not dispose of the application till 30.06.2008. Thereafter, the Tribunal rejected the application on the ground that the six months period had lapsed.

Do you think that the stand taken by the Tribunal is valid in law?

Settlement Commission

4. Sonata Steel Industries (SSI) manufactures 'kitchen sink' and classifies it as 'sanitary ware'. However, the Revenue insists that the said product should be classified under the heading 'household article of iron and steel'. SSI approaches you for the professional advice asking whether it can take the issue before the Settlement Commission. You are required to provide them the required advice.

Advance Ruling

5. Can a writ petition be invoked against advance rulings?

SSI

6. Cupurus Coporations - a small scale unit - has affected clearances of goods of the value of Rs. 900 lakh during the financial year 2008-09. The said clearances include the following:
- (i) Clearance of excisable goods without payment of excise duty to a 100% EOU : Rs. 250 lakh
 - (ii) Export to Nepal and Bhutan : Rs. 125 lakh
 - (iii) Job work under exemption Notification No. 214/86 C.E.: Rs. 270 lakh
 - (iv) Goods manufactured in rural area with the brand name of others: Rs. 120 lakh
- Examine, whether the benefit of exemption under the Notification No. 8/2003 dated 01.03.2003 would be available to the unit for the financial year 2009-10.

Refund

7. What is a Consumer Welfare Fund? How is this fund utilized?

Classification under central excise

8. When entries in Harmonized System of Nomenclature (HSN) and the Excise Tariff are not aligned, can reliance be placed upon HSN for the purpose of classification of goods?

Appeal

9. An appeal filed under section 35(2) of the Central Excise Act, 1944 by the Committee of Commissioners themselves and not by subordinate officer based on authorization is not maintainable. Examine, with the help of a decided case law, if any, the validity of the statement.

Central Excise Rules, 2002

10. Can goods lost by 'theft' or 'dacoity' be considered to be "goods lost or destroyed by natural causes or by unavoidable accident" under rule 21 of the Central Excise Rules, 2002?

Valuation

11. Dodo Foods is engaged in manufacturing Dodo soft drinks. Valuation of the soft drinks is done as per section 4A of the Central Excise Act, 1944. In order to sustain the tough market competition, the company reduced its prices from Rs. 12 to Rs. 10. Hence, on the existing stock of the soft drink bottle, MRP of Rs. 12 is scored out and MRP of Rs. 10 is printed. However, the crossed out MRP of Rs. 12 is clearly visible. Which MRP shall be considered for valuation purposes?

CENVAT Credit Rules, 2004

12. Triveni Texturisers purchased inputs from Khaitani Industries and availed the CENVAT credit of the entire excise duty paid by Khaitani Industries as reflected in the invoice. Subsequently, Khaitani Industries gave certain amount of discount for the reason of the

bulk purchases made by Triveni Texturisers during the period. This trade discount was given by issuing credit notes for the basic price. Department contends that Triveni Texturisers is not entitled to the CENVAT credit on the entire duty paid on the price initially invoiced and should reverse the credit proportionately.

Discuss whether the contention of the Revenue is justifiable.

Removal of goods from 100% EOU to Domestic Tariff Area

13. Briefly explain the procedure for removal of goods from a hundred percent export oriented unit to the domestic tariff area.

CUSTOMS

Section 121 of the Customs Act, 1962

14. Whether custom authorities are authorized to auction the confiscated goods during the period of pendency of appeal?

Valuation

15. Gulf Corporation Limited imported some goods from USA. The details of the transaction are as follows:-

Authority	Rate of exchange
CBEC	1 US \$=Rs 45
RBI	1 US \$=Rs 46.10

CIF value of the goods is \$ 20,000

Rate of basic custom duty is 40%

Rate of education cess is 3%

If similar goods were manufactured in India, excise duty payable as per Tariff is 8%.

Calculate assessable value and total duty payable thereon.

Warehousing

16. Explain 'Warehousing without warehousing' under the Customs Act, 1962.

Appeal

17. Can there be a difference in the final order issued by Tribunal and the handwritten order in the order sheet?

Section 2 of the Customs Act, 1962

18. Define briefly, the following with reference to section 2 of the Customs Act, 1962:-

- (a) Importer
- (b) Person-in-charge

- (c) Foreign going vessel
- (d) Adjudicating authority

Confiscation of conveyances

19. Illustrate the conveyances which are liable to confiscation under section 115 of the Customs Act, 1962.

Baggage Rules, 1998

20. Answer the following question with reference to the Baggage Rules, 1998:-

Amarnath, an IT professional and a person of Indian origin, is residing in Denmark for the last 14 months. He wishes to bring a used microwave oven (costing approximately Rs. 4,200 and weighing 15 kg) with him during his visit to India. He purchased the oven in Denmark 6 months back and he has been using that oven for his personal use in his kitchen. He is not aware of Indian customs rules. Could you please provide him some advice in this regard?

SERVICE TAX

Taxable services

21. Discuss, with the help of a decided case law, if any, whether the explanation inserted by Finance Act, 2008 to the definition of 'business auxiliary service' under section 65(19)(ii) of the Finance Act, 1994 as amended can be construed having retrospective effect and retroactive operation.

Credit of input services

22. M/s Ojha Cements Limited (OCL) was engaged in the business of manufacturing and selling of cement and had been duly paying the excise duty in respect of cement produced by it. OCL supplied cement to its customers "FOR destination" and bore the freight up to the door steps of the customer i.e. the destination point. The assessee had taken the CENVAT credit of the service tax paid on the aforementioned freight by it.

The Department contended that the payment of service tax on the freight incurred by the assessee was not input service as per rule 2(l) of the CENVAT Credit Rules, 2004 and hence the CENVAT credit was not admissible on it under the said rules.

Explain, with the help of a decided case law, if any, whether the stand taken by Department is tenable in law.

Refund of the service tax

23. Answer the following questions, with reference to the Notification No. 41/2007 dated 06.10.2007 as amended:-
 - (a) What is the time limit for filing the refund claim?
 - (b) Whether the limitation period for filing the refund claim would be counted from the date of exports or from the date of receipt of remittances?

- (c) Whether refund would be admissible on specified taxable service received prior to the date it is notified in the said notification, if such services are used in relation to goods which are exported subsequent to the date on which such taxable services are notified under Notification No. 41/2007-ST?

Filing of return

24. Briefly answer the following questions:-

- (a) Is filing of return compulsory even if no taxable service is provided or received or no payments are received during a period (a particular half year)?
- (b) Whether a single return is sufficient when an assessee provides more than one service?
- (c) What are the returns a service tax assessee has to file?

Penal provisions

25. Briefly discuss the residual penalty under section 77 of the Finance Act, 1994 as amended.

SUGGESTED ANSWERS/HINTS

1. The facts of the given case are similar to the case of CCE v. Blow Plast Ltd. 2009 (236) E.L.T. 631 (Del.). The Tribunal arrived at the conclusion that since the supplier had cleared the complete set of elements required for the work station in a knocked down condition, it could not be said that the supplier had manufactured the parts and not the complete system.

The High Court while affirming the Tribunal's order held that the same product as known to the trade could not be manufactured twice over. Consequently, nothing new had come into existence so as to bring the activities of the assessee within the parameters specified in section 2(f) of the Central Excise Act, 1944. What the assessee received was complete OFS/WS and what it left on its clients' sites was also complete OFS/WS. Nothing new had come into existence. Hence, no duty was payable by the assessee.

Therefore, it can be inferred that the Revenue's allegation is not tenable in law

2. Section 13 and section 18 of the Central Excise Act, 1944 contain the provisions relating to arrest under Central Excise Act.

Any Central Excise Officer not below the rank of Inspector can arrest any person whom he has a reason to believe to be liable to punishment under the Central Excise Act, 1944. Such an arrest can be only with the prior approval of Commissioner of Central Excise.

The arrested person must be produced before the Magistrate within twenty four hours of the arrest. Normally, the Magistrate exercises the power to grant bail.

As per section 18, all arrests shall be carried out in accordance with the provisions of the Code of Criminal Procedure relating to arrest.

3. In case of Sree Ayyangar SPG & WVG Mills Ltd. v. CIT 2008 (229) ELT 164 (SC), the Supreme Court while interpreting section 254(2) of the Income Tax Act, 1961 held that once the assessee had moved the application within four years from the date of order, the Tribunal could not reject that application on the ground that four years had lapsed, which included the period of pendency of the application before the Tribunal. Therefore, it concluded that if the assessee had moved the application within four years from the date of the order, the Tribunal was bound to decide the application on the merits and not on the ground of limitation.

Applying the ratio of the aforementioned case in the given situation, it can be inferred that limitation period for filing rectification of mistake is not the time limit for deciding the rectification of mistake under section 35C(2) of the Central Excise Act, 1944. Hence, in the instant case, the Tribunal is not justified in rejecting the application on the ground that the six months period has lapsed as the application had been filed before the expiry of six months.

4. As per section 32E of the Central Excise Act, 1944, an application cannot be made in Settlement Commission for interpretation of classification of goods. Since, this case relates to interpretation of classification of goods, hence, application shall not be admitted by the Settlement Commission.
5. Recently, the Delhi High Court, in case of UAE Exchange Centre Ltd. v. UOI 2009 (236) E.L.T. 223 (Del.), has held that the ruling by Advance Rulings Authority is binding on the applicant, transaction on which the ruling is sought and the departmental officers concerned. It does not exclude the jurisdiction of the Courts either expressly or by implication. There is no provision which gives finality to the decision of the Authority. The High Court viewed that the Courts would have jurisdiction to entertain actions under Article 226 of the Constitution (writ petition) impugning the ruling given by the Authority. Therefore, a writ petition can be invoked against advance rulings.
6. Cupurus Coporations will be eligible for benefit of exemption under Notification No. 8/2003 dated 01.03.2003 only if value of clearances during preceeding financial year - 2008-09 does not exceed 400 lakhs.

Calculation of value of clearances during the financial year 2008-09:-

Particulars	Rs.
Total value of clearances	900 lakhs
Less : Clearance to 100% EOU (Note – 1)	250 lakhs
Less: Clearance under exemption Notification No. 214/86 (Note - 2)	<u>270 lakhs</u>
Total value of clearances	<u>380 lakhs</u>

Since, the value of clearances for home consumption in financial year 2008-09 didn't exceed Rs. 400 lakh, the benefit of exemption shall be available during financial year 2009-10.

Notes : For the purpose of computing the limit of 400 lakh:-

1. clearances to 100 % EOU shall be excluded as these clearances are otherwise exempt also,
 2. clearance under exemption Notification No. 214 / 86 shall be excluded,
 3. export to Nepal & Bhutan shall be treated clearance for home consumption and hence not excluded,
 4. goods bearing the brand name of others are excluded but if produced in rural area then it qualifies for exemption and hence not excluded.
7. Meaning of Consumer Welfare Fund:-

The Consumer Welfare Fund has been established by the Central Government under the provisions of section 12C of the Central Excise Act, 1944 wherein the following amounts are credited:-

- (i) the refund of duty of excise/customs, which is not to be granted to the applicant,
- (ii) any income from investment of the amount credited to the Fund and any other monies received by the Central Government for the purposes of this Fund, and
- (iii) surplus amount of service tax referred to in section 73A(6) of the Finance Act, 1994 as amended.

Utilization of funds:-

Section 12D of the Central Excise Act, 1944 provides that:-

- (1) any money credited to the fund shall be utilized by the Central Government for the welfare of the consumers in accordance with such rules framed in this behalf.
 - (2) The Central Government shall maintain or, if it thinks fit, specify the authority, which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor General of India.
8. The Supreme Court in case of *Camlin Ltd. v. CCEx.*, Mumbai 2008 (230) E.L.T. 193 (SC) has held that when the entries in the Harmonised System of Nomenclature (HSN) and the Excise Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff. It further added that in the instant case, the Tribunal erred in relying upon the HSN for the purpose of classification of the impugned product. The Tribunal failed to appreciate that since the entries under the HSN and the entries under the said Tariff are completely different, the Tribunal could not base its decision on the entries in the HSN.
9. The statement is not valid. The Gujarat High court, in case of *Commr. Of C.Ex. & Cus. v. Shree Ganesh Dyeing & Ptng. Works* 2008 (232) ELT 775 (Guj.), has decided the issue as to whether the appeal filed by Commissioner himself and not by subordinate officer based on authorization, is maintainable. In the instant case, the assessee raised a preliminary objection as to maintainability of the appeal on the ground that the appeal

had been filed by Commissioner himself, instead of by the Central Excise Officer authorised by the Commissioner, as required by section 35B(2) of the Central Excise Act, 1944.

The Court, while analyzing section 35B(2) of the Central Excise Act, 1944, held that section 35B(2) is made up of two parts or two stages. The first stage is formation of an opinion by Commissioner that the order made by the appellate authority is not legal or proper. The second stage is filing of an appeal against order of appellate authority by directing any Central Excise Officer authorised by the Commissioner in this behalf to file an appeal on behalf of the Commissioner. Thus, the Commissioner is vested with a discretion, in the first instance to form an opinion as to whether appellate order is legal or proper and then exercise the discretion to decide whether an appeal should be preferred or not, having come to the conclusion that the order is not proper or legal.

The High Court further clarified that when a person is statutorily entitled to delegate powers to another person to file an appeal on behalf of the first named person, it goes without saying that the power which can be delegated is the power which the first named person would be entitled to exercise. Hence, until and unless the Commissioner himself is entitled to file an appeal, there is no question of the Commissioner authorising another officer to file appeal on behalf of the Commissioner. The language of the latter part of sub-section (2) of section 35B of the Act itself makes this more than abundantly clear when the provision uses the phrase 'to appeal on his behalf'.

Therefore, if an appeal has been preferred by Commissioner or the authorised officer, the appeal would be valid and shall be treated to be a valid appeal in eyes of law.

Note : Section 35B(2) was amended vide the Finance Act, 2005 to provide that instead of Commissioner of Central Excise, a Committee of Commissioners of Central Excise shall review the orders of Commissioner of Central Excise (Appeals) and direct any Central Excise Officer authorized by him to appeal on its behalf to the Appellate Tribunal. However, the principle enunciated in this judgment will hold good in respect of amended section 35B (2) as well.

10. The question as to whether goods lost by 'theft' or 'dacoity' can be considered to be "goods lost or destroyed by natural causes or by unavoidable accident" under rule 21 of the Central Excise Rules, 2002 was decided by the larger bench of the Tribunal in case of Gupta Metal Sheets v. CCE 2008 (232) E.L.T. 796 (Tri.-LB). It clarified that the term 'loss' cannot be understood in the limited sense of 'loss to the manufacturer'. In the context of the Central Excise Law, it has to be understood as being unavailable for consumption in the market. In case of theft or dacoity, the goods are not 'lost' or 'destroyed'; they rather enter the market for consumption, albeit stealthily, after being removed from the approved premises or the place of storage. As per rule 49 of the erstwhile Central Excise Rules, 1944 (now rule 21 of the Central Excise Rules, 2002); loss must be attributable to any natural cause or unavoidable accident.

'Natural cause' refers to some natural phenomenon i.e. vagary of nature or some act of nature like fire, flood or a similar natural calamity. The act of forcibly removing the goods

by any means - non-violent or violent - amounting to theft or dacoity under the Indian Penal Code cannot be said to be a natural cause.

Considering the definitions of 'theft' and 'robbery' in the Indian Penal Code, the Tribunal held that 'theft' or 'dacoity' involves forcible removal of goods by non-violent or violent means, as the case may be, and this cannot be said to be a natural cause. The Tribunal opined that theft or dacoity is an incident and not an accident, much less unavoidable. Theft and dacoity are committed by a design and they cannot be said to be accident by any logic. By taking due care and caution, they can be avoided and, therefore, it cannot be said that theft or dacoity is 'unavoidable accident'.

In view of the above, the Tribunal held that 'theft' or 'dacoity' cannot be called unavoidable accident within the meaning of the rule 49 of erstwhile Central Excise Rules, 1944 (now rule 21 of the Central Excise Rules, 2002) and the goods lost in theft or dacoity would not be eligible for remission.

11. Circular no. 673/64/2002-CX dated 28.10.2002 provides that once MRP is scored out, (even if it remains visible) and another MRP is printed on the package, it can not be said that the package has two MRPs printed on it, since the scored out MRP could not be considered as an MRP either by the seller or by the consumer. Hence, the scored out MRP is to be ignored. Therefore, in the instant case, the new MRP of Rs. 10 shall be considered for the purpose of valuation.

12. No, the contention of the Revenue is not justifiable in law.

In ACS Hydraulics Pvt. Ltd. v. CCE 2008 (227) ELT 425 (Tri.), the Tribunal held that there was no loss to the Revenue as far as the payment of duty was concerned by the supplier of the goods on the proper correct assessable value. Therefore, the Department could not direct the appellant to reverse the credit or to disallow the credit as the supplier had paid the duty and taken credit which was equivalent to duty shown in the invoice issued by the supplier.

Besides, Circular No. 877/15/2008-CX dated 17.11.2008 has also clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice, would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise.

In view of the above discussion, it can be concluded that Triveni Texturisers is entitled to the CENVAT credit on the entire duty paid on the price initially invoiced and need not reverse the credit proportionately.

13. Rule 17 of the Central Excise Rules, 2002 provides that where any goods are removed from a hundred percent export oriented unit to domestic tariff area, such removal shall be made under an invoice in the procedure specified under rule 11 of the said rules. Further, removal shall be made only after payment of appropriate duty by crediting the duty payable to the account of the Central Government in the manner specified in rule 8 or by utilizing the CENVAT credit.

Such unit is required to maintain appropriate accounts related to production in the prescribed form giving the following details :

- (i) description of goods
- (ii) quantity removed
- (iii) duty paid.

Such unit shall submit a monthly return in the specified form (E.R - 2) in respect of the excisable goods manufactured, and receipt of inputs and capital goods, in the unit, to the Superintendent of Central Excise within 10 days from the close of the month to which the return relates.

The proper officer may on the basis of information contained in the return filed by the unit, and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board.

Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

14. Bombay High Court, in case of Shabir Ahmed Abdul Rehman v. UOI 2009 (235) ELT 402 (Bom.), decided the similar issue in favour of assessee. In this case, Revenue confiscated the gold carried by the petitioner from Muscat. The petitioner informed the custom authorities that he was filing an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods.

The High Court held that handing over the confiscated gold immediately after serving the order of confiscation itself was improper. In any event, after receiving letter from the petitioner, the custom authorities ought to have stopped the auction sale of the confiscated gold. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified.

Hence, it can be concluded that the custom authorities are not authorized to auction the confiscated goods during the period of pendency of appeal.

15. Computation of assessable value and total custom duty payable:-

Particulars	
CIF Value	\$ 20,000
Add : Landing charges @ 1% of CIF value (Note – 1)	<u>\$ 200</u>
	<u>\$ 20,200</u>
Assessable value (in Rupees) = \$20,200 × Rs. 45 (Note -2)	Rs. 9,09,000
Add : Basic custom duty @ 40% (Rs. 9,09,000 × 40%)	<u>Rs. 3,63,600</u>
	Rs. 12,72,600

Add : Countervailing duty (Rs. 12,72,600 × 8.24%)	<u>Rs. 1,04,862.20</u>
	Rs.13,77,462.24
Education cess [(Rs. 3,63,600 + Rs. 1,04,862.20) × 3%]	<u>Rs. 14,053.87</u>
Total custom duty payable (Rs. 3,63,600 + Rs. 1,04,862.20 + Rs. 14,053.87)	<u>Rs. 4,82,516.11</u>

Notes :-

- (1) Landing charges at the rate of 1% of the CIF value of the imported goods, shall be added, whether ascertainable or not [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (2) Applicable exchange rate is Rs. 45/- per \$ as notified by CBEC because explanation to section 14(1) provides that rate of exchange shall be the rate as notified by CBEC.

16. Warehousing without warehousing (Section 49 of the Customs Act, 1962)

Section 49 allows the importer to store the goods in a public warehouse, but the goods shall not be treated as warehoused goods for the purpose of the Customs Act, 1962 and accordingly warehousing provisions shall not apply to such goods. This may arise in following two cases:-

- (i) Where due to some genuine difficulty, the importer is unable to clear the goods for home consumption within the stipulated time, the goods may be deposited in a warehouse without double duty bond. This facility is available irrespective of whether the goods are dutiable or not.
- (ii) If the importer makes a declaration and for any reason the importer is unable to furnish all the particulars of the goods, he can seek permission to deposit the goods in a public bonded warehouse appointed under section 57 pending receipt of the necessary information and the supporting documents under section 49.

17. The High Court in case of Dinkar Khindria v. UOI 2008 (231) ELT 47 (Del.) held that a difference in the Final Order issued by Tribunal and the Handwritten Order in Order Sheet i.e. a change of order by Members of the Tribunal, amounts to tampering with the judicial records. Once an order is passed and it is signed by the members, the same cannot be altered unless law provides for a review of the same and that too only after hearing the parties. The High court held that Tribunal should ensure that such unsavory incidents should not occur in the course of their conduct of judicial proceedings.

18. (a) Importer: [Section 2(26)]:

Importer in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

(b) Person-in-charge: [Section 2(31)]:

Person-in-charge means-

- (a) in relation to a vessel, the master of the vessel;
- (b) in relation to an aircraft, the commander or the pilot-in-charge of the aircraft;
- (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
- (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance.

(c) Foreign going vessel or aircraft: [Section 2(21)]:

The term is defined to mean any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-

- any naval vessel of any foreign Government taking part in any naval exercise;
- any vessel engaged in fishing or any other operations outside the territorial waters of India;
- any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

(d) "Adjudicating authority" [Section 2(1)]

means any authority competent to pass any order or decision under the Customs act, 1962, but does not include the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), Commissioner of Central Excise (Appeals) or Appellate Tribunal;

19. The following conveyances shall be liable to confiscation:-

- (a) any vessel which is or has been within the Indian customs waters, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;
- (b) any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs;
- (c) any conveyance which having been required to stop or land under section 106 fails to do so, except for good and sufficient cause;
- (d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer;
- (e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the

master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

20. As per rule 5 of the Baggage Rules, 1998, Amarnath is entitled to bring the used household articles upto an aggregate value of Rs. 12,000 free of duty. Hence, Amarnath can clear the used Microwave oven free of duty within the permissible allowance.
21. In a recent case, the Apex Court in the case of Union of India & Ors v. M/s Martin Lottery Agencies Ltd. 2009 (14) STR 593 (SC) ruled that by reason of an explanation, a substantive law may also be introduced. If a substantive law is introduced, it will have no retrospective effect. Subject to the constitutionality of the Finance Act, 2009 as amended in view of the explanation appended to this, the Supreme Court opined that the service tax, if any, would be payable only with a prospective effect and not with retrospective effect.

It further opined that in a case of this nature, the Court must be satisfied that the Parliament did not intend to introduce a substantive change in the law. As stated herein before, for the aforementioned purpose, the expressions like 'for the removal of doubts' are not conclusive. The said expressions appear to have been used under assumption that organizing games of chance would be rendition of service. It held that the explanation is not clarificatory or declaratory in nature. Hence, it could not be construed having retrospective effect and retroactive operation.

22. No, the stand taken by the Department is not tenable in law.

The facts of the given case are similar to the case of Ambuja Cements Ltd. v. UOI 2009 (14) S.T.R. 3 (P & H). In this case, the High Court observed that the 'input service' has been defined under rule 2(l) of the CENVAT Credit Rules, 2004 to mean any service used by the manufacturer whether directly or indirectly and also includes, inter alia, services used in relation to inward transportation of inputs or export goods and outward transportation up to the place of removal.

Further, the Board's Circular No. 97/8/2007-ST dated 23-8-2007 contemplates compliance of certain conditions where the sale has taken place at the destination point. These conditions are as follows:-

- (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step;
- (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and
- (iii) the freight charges were an integral part of the price of goods.

The first requirement was fulfilled because:-

- (i) the supply of cement by appellant to its customer was 'FOR destination',
- (ii) the freight up to the door step of the customer was borne by the appellant, and
- (iii) the service tax on the freight charges was paid by the appellant.

Moreover, for transportation purposes insurance cover has also been taken by the appellant which further shows that the ownership of the goods and the property in the goods has not been transferred to the seller till the delivery of the goods in acceptable condition to the purchaser at his door step. Accordingly, the second condition also stood fulfilled.

Since, the delivery of the goods is at 'FOR destination' price, the third condition that the freight charges were integral part of the excisable goods also stood fulfilled.

In view of above discussion, the High Court opined that the questions of law deserved to be answered in favour of the assessee-appellant and against the Revenue. Hence, it held that the assessee was entitled to the credit of the service tax paid on the freight up to the door steps of the customer.

23. (a) Notification No. 32/2008 ST dated 18.11.2008 has extended the time-limit for filing the refund claim from sixty days to six months from the end of the relevant quarter during which the said goods have been exported.
- (b) Circular No. 112/06/2009 dated 12.03.2009 clarifies that it is clearly prescribed in the notification that limitation period of six month is to be computed from the date of exports.
- (c) Circular No. 112/06/2009 dated 12.03.2009 clarifies that being prospective in nature refund is not admissible on such services received prior to the date they are notified in the said notification, even if the goods, in relation to which these services are used, are exported after the date when such services are notified under Notification No. 41/2007-ST.
24. (a) Filing of return within the prescribed time limit is compulsory, even if it may be a nil return, failing which penal action is attracted.
- (b) A single return is sufficient because the ST-3 Return is designed to capture details of each service separately with in the same return.
- (c) (i) ST-3 Return – For all the registered assessee, including input service distributors.
- (ii) ST-3A Return – The assessee who is making provisional assessment under rule 6(4) of the Service Tax Rules, 1994 is required to file a memorandum in form ST-3A accompanying the return.
25. Penalty for contravention of rules and provisions of the Finance Act, 1994 as amended for which no penalty is specified elsewhere [Section 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 Rs. 5,000 or Rs. 200 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 Rs.5,000;
 - (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 Rs. 5,000 or Rs. 200 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 Rs.5,000;
 - (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 Rs.5,000.
- (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 Rs.5,000.

IMPORTANT AMENDMENTS MADE BETWEEN 01.05.2008 TO 30.04.2009

Students may note that the Study Material for Indirect Taxes contains all the relevant amendments made by the Finance Act, 2008. Further, circulars/notifications issued up to 30.04.2008 have also been incorporated therein. The following are the amendments which have been made between 01.05.2008 to 30.04.2009. It may be carefully noted that for the students appearing in November 2009 exams, the amendments made by the notifications, circulars and other legislations up to 30.04.2009 are relevant.

A. EXCISE

1. Following amendments have been made in the Central Excise Rules, 2002:

(i) Rule 12(2A) inserted- Annual Installed Capacity Statement

This rule provides that every assessee shall submit to the Superintendent of Central Excise, an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the financial year to which the statement relates in Form ER-7 by the 30th April of the succeeding financial year.

However, the Central Government may specify assessee or class of assessee who may not require to submit such an Annual Installed Capacity Statement.

For the year 2007-08, the said statement shall be furnished by 31st October, 2008.

[Notification No. 38/2008 CE (NT) and Notification No. 39/2008 CE (NT) dated 29.09.2008]

(ii) Amendments to rule 17 - Removal of goods by a 100% EOU for DTA

Notification No. 23/2008 CE (NT) dated 23.05.2008 has amended rule 17 of the Central Excise Rules, 2002 with effect from 01.06.2008 as follows:-

(a) Rule 17(1) Monthly payment of duty by 100% EOUs

In case of removal of excisable goods from 100% Export Oriented Unit (EOU) to Domestic Tariff Area (DTA), the duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8. Thus, duty can be paid monthly in case of removals from 100% EOUs also.

(b) Rule 17(4) Scrutiny by the proper officer

The proper officer may on the basis of information contained in the return filed by the unit under rule 17(3), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board.

(c) Rule 17(5) Furnishing of documents and records by assessee

Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

(d) Amendment of Form ER-2

Notification No. 24/2008 CE (NT) dated 23.05.2008 has amended Form ER-2- form prescribed for monthly return for 100% EOU in respect of goods manufactured, goods cleared and receipt of inputs and capital goods.

2. CENVAT Credit Rules, 2004:

I. Amendments in CENVAT Credit Rules, 2004

(a) Rule 3(7)(a) CENVAT credit admissible on inputs received from 100% EOU/unit in EHTP/STP

Rule 3(7)(a) provided that CENVAT credit in respect of inputs/capital goods produced or manufactured, by a 100% Export Oriented Undertaking (EOU) or by a unit in an Electronic Hardware Technology Park (EHTP) or in a Software Technology Park (STP) and which pays excise duty levied under section 3 of the Excise Act read with serial number 2 of Notification No. 23/2003-CE, dated 31.03.2003, used in the manufacture of the final products or in providing an output service, in any other place in India, shall be admissible equivalent to the amount calculated in the following manner namely :-

=Assessable Value $[(1+BCD/400) \times (CVD/100)]$

wherein, BCD stands for Basic Custom Duty

CVD stands for Countervailing Duty

Notification No. 48/ 2008-Central Excise (N.T.) dated 05.12.2008 has amended the aforesaid formula. Consequently, the CENVAT credit in respect of inputs cleared from 100% EOU, by a unit in EHTP, or by a unit in STP to any other place in India shall be as follows:-

=Assessable Value $[(1+BCD/200) \times (CVD/100)]$

(b) Proviso to rule 3(1)(xi) of the CENVAT Credit Rules, 2004

The amount equal to excise duty paid on the capital goods at the time of debonding of the unit in terms of the para 8 of Notification No. 22/2003 CE dated 31.03.2003 (which exempts certain goods when brought into 100% EOU / STP complex) shall be allowed as CENVAT credit.

(c) Rule 6(6)(i) Benefit under rule 6(6) extended to a developer of a SEZ

Rule 6(6)(i) provided that CENVAT credit shall be admissible on the inputs used in the manufacture of the final product cleared without payment of duty to a unit in a Special Economic Zone (SEZ).

Notification No. 50/2008 – CE (N.T.) dated 31.12.2008 has extended this benefit to “a developer of a Special Economic Zone (SEZ)” also.

II. Clarifications relating to CENVAT Credit Rules, 2004

(a) Clarification of certain issues relating to rule 6(3) of the CENVAT Credit Rules, 2004

A. Circular No. 868/6/2008 CX dated 09.05.2008 has clarified the following issues with regard to rule 6(3) of the CENVAT Credit Rules, 2004*:

S.No.	Question	Answer
1.	Whether an assessee availing option (i) or option (ii) under rule 6(3) is allowed to take CENVAT credit of duty paid on inputs and input services which are used for both dutiable and exempted goods or services?	Yes, credit on such inputs and input services is allowed. However, an assessee following option (i) or (ii) under rule 6(3) shall not be allowed to take CENVAT credit of duty paid on those inputs and input services which are used exclusively for the manufacture of exempted goods or provision of exempted services [refer Explanation II of rule 6(3)]. For the purpose of the calculation of amount under formula given under rule 6(3A), the total CENVAT credit taken on inputs and input services does not include

		excise duty paid on inputs or service tax paid on input services which are used exclusively for the manufacture of exempted goods or provision of exempted services.
2.	Whether an assessee availing option (i) in respect of certain exempted goods/services can also avail option (ii) in respect of other exempted goods or services simultaneously?	An assessee opting for either of the option is required to avail the said option for all the exempted goods manufactured by him and all the exempted services provided by him and the option once exercised during a financial year (F.Y.) cannot be withdrawn during the remaining part of the FY. Therefore, the same assessee cannot avail both option (i) and option (ii) simultaneously during a financial year. [Explanation I to Rule 6(3)].
3.	Assessee opting for option (i) is required to pay an amount equivalent to 10% of value of exempted goods or 8% of value of exempted services. What is the scope of term "value" for the said purpose?	Value of the exempted goods is the transaction value as determined in terms of section 4 of the Central Excise Act, 1944 or value determined under section 4A. However, in case of goods chargeable to specific rate of duty, the value, shall be the transaction value to be determined under section 4. Value of the exempted service is the gross amount charged for providing the exempted service [without abatement].
4.	What is the accounting code to be followed by the assessee who is required to pay 8% or other amount for the exempted service under Rule 6(3)?	For the present, the assessee can pay the said amount under the accounting code applicable for service tax i.e. 0044.
5.	Whether input services distributor can also opt for option (i) or option (ii)?	As ISD does not provide any service, and is like a trader, the question of availing either of the options would not arise.
6.	Whether export of service without payment of service tax under Export of Service Rules shall be treated as exempted service for the purpose of rule 6(3)?	No, export of services without payment of service tax are not to be treated exempted services.

7.	What is the manner for calculation of CENVAT Credit amount attributable to inputs used in or in relation to the manufacture of exempted goods?	It is required to be done on the basis of actual consumption of inputs used and the quantification may be made based upon the stores/production records maintained by the manufacturer. Further, a certificate from Cost Accountant/Chartered Accountant giving details of quantity of inputs used in the manufacture of exempted goods, value thereof and CENVAT credit taken on these input may be submitted at the end of the year.
8.	Whether credit in respect of input services covered by rule 6(5) would be required to be taken into account for determination of amount payable as per formula provide in rule 6(3A)?	No, the credit attributable to services mentioned in sub-rule (5) shall not be taken into account for determination of amount under rule 6(3A).

*Note - Rule 6(3) pertains to an assessee opting not to maintain separate CENVAT credit accounts for dutiable and exempted outputs. Such assessee has to opt for one of the following two options:

(i) Pay an amount equal to 10% of the value of the exempted goods or 8% of the value of the exempted services. Exempted service includes non-taxable service also.

OR

(ii) Pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in or in relation to manufacture of exempted goods or for provision of exempted services. Rule 6(3A) prescribes the conditions and procedure to determine the amount of CENVAT credit attributable to exempted outputs.

Schemes under rule 6(3) are optional and each individual scheme is comprehensive and self-contained. An assessee can exercise the option in relation to all his activities as an assessee and the option is not available only in relation to a part of his activity and the option once exercised cannot be withdrawn during the said financial year.

B. Rule 11D not applicable to amount collected under rule 6(3) of the CENVAT Credit Rules, 2004

It has been clarified that so long as the amount of 8% or 10% is paid to the Government in terms of rule 6(3) of the CENVAT Credit Rules, 2004*, the provisions of section 11D shall not be applied even if the amount is recovered from the buyers. As per section 11D, the Central Government shall be liable to recover any amount which has been collected as excise duty and not paid to the credit of the Central Government. It is to be noted that the CENVAT credit can be taken by the buyer only if it is a payment of duty in

terms of rule 3(1) of the aforementioned rules. Therefore, the CENVAT credit of the said amount of 8% or 10% cannot be taken since such payment is not a payment of duty in terms of rule 3(1) of the said rules. So, the said 10% amount should be shown in the invoice as "10% amount paid under rule 6 of the CENVAT Credit Rules, 2004".

[Circular No. 870/08/2008-CX dated 16.05.2008]

*Note - W.e.f. 01.04.2008, rule 6(3) of the CENVAT Credit Rules, 2004 has been amended and it provides for payment of an amount equal to 10% of value of the exempted goods, instead of 10% of the price of the exempted goods as provided earlier. The value is to be determined as per section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

(b) Clarification regarding reversal of CENVAT credit in case of trade discount

Sometimes, the supplier allows trade discount to the manufacturer. However, the manufacturer avails the CENVAT credit of the entire excise duty paid by the supplier as reflected in the invoice. The issue raised was whether proportionate credit should be reversed in such a case.

Circular No. 877/15/2008-CX dated 17.11.2008 has clarified that in such cases, the entire amount of duty paid by the manufacturer, as shown in the invoice, would be available as credit irrespective of the fact that subsequent to clearance of the goods, the price is reduced by way of discount or otherwise.

However, if the duty paid is also reduced, along with the reduction in price, the reduced excise duty would only be available as credit. It may however be confirmed that the supplier, who has paid duty, has not filed/claimed the refund on account of reduction in price.

3. Pan Masala notified for the purpose of charging duty on the basis of capacity of production

Section 3A, as inserted by the Finance Act, 2008, contains the provisions to charge excise duty on the basis of capacity of production in respect of notified goods.

Notification No. 29/2008 CE (NT) dated 01.07.2008 has notified pan masala [falling under tariff item 2106 90 20 of the First Schedule to the Central Excise Tariff Act, 1985 (except the pan masala containing not more than 15% betel nut)] and pan masala containing tobacco, commonly known as gutkha (falling under tariff item 2403 99 90 of the said Tariff Act) manufactured with the aid of packing machine and packed in pouches, for the purpose of section 3A.

In this regard, Notification No. 30/2008 CE (NT) dated 01.07.2008 has notified the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. They have come into force on the 1st day of July, 2008.

Further, Notification No. 32/2008 CE (NT) dated 28.08.2008 has granted rebate of duty on Pan Masala containing tobacco (gutkha) on which duty of excise has been paid under section 3A of the Central Excise Act, 1944, on their exportation out of India on or after

1st July, 2008, to any country except Nepal and Bhutan subject to the conditions, limitations and procedures prescribed therein.

4. Condition of paying excise duty from account current, done away with, in the following cases:

(a) Notification No. 39/2004 CE (NT) dated 25.11.2004 inter alia exempts class of manufacturers, who manufacture certain specified excisable goods prescribed therein and have paid excise duty of less than Rs.100 lakh from account current during the preceding financial year, from filing the annual information relating to principal inputs and monthly return of receipt and consumption of each of the principal inputs.

Notification No. 41/2008 CE (NT) dated 29.09.2008 has amended the said notification so as to remove the condition of paying the stipulated amount of duty from account current i.e., in cash. Now, the duty can be paid by utilizing the CENVAT credit also.

Consequently, now the manufacturers of the prescribed excisable goods shall be exempted from filing the annual information relating to principal inputs and monthly return of receipt and consumption of each of the principal inputs if they have paid the duty of less than Rs.100 lakh during the financial year, by any mode - either in cash or by utilizing CENVAT credit.

(b) Notification No. 17/2006 CE (NT) dated 01.08.2006 inter alia exempts the assesseees who have paid excise duty of less than Rs.100 lakh from account current during the financial year, from filing of the Annual Financial Information Statement.

Notification No. 42/2008 CE (NT) dated 29.09.2008 has amended the said notification so as to remove the condition of paying the stipulated amount of duty from account current i.e., in cash. Now, the duty can be paid by utilizing the CENVAT credit also.

Consequently, now the assesseees shall be exempted from filing the Annual Financial Information Statement if they have paid the duty of less than Rs.100 lakh during the financial year, by any mode - either in cash or by utilizing CENVAT credit.

5. Proviso to clause (2) of Notification No. 35/2001 CE (NT) dated 26.06.2001* amended

If a person has more than one premise requiring registration, he may obtain a single registration for all such premises if following conditions are satisfied:-

- (i) Such person manufactures Compressed Natural Gas (falling under heading 2711 of the of First Schedule to the Central Excise Tariff Act, 1985), and
- (ii) all the premises fall within the jurisdiction of one Chief Commissioner of Central Excise, and
- (ii) he has submitted the details of all such premises along with the application for registration.

However, prior intimation shall be given before starting any additional premises subsequent to obtaining such registration:

Further, if the assessee is registered under the existing provision, he may apply for fresh registration or file amendment to the registration as the case may be, in accordance with provisions of this notification.

[Notification No.43/2008-CE (NT) dated 06.10.2008]

*Note - Clause (2) of Notification No. 35/2001 CE (NT) dated 26.06.2001 prescribes that if the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises.

6. SSI exemption extended to SSIs producing specified packing materials bearing the brand name of another person

Notification No. 47/2008 CE dated 01.09.2008 has amended Notification No. 8/2003 CE dated 01.03.2003 to extend the benefit of small scale exemption of excise duty to SSIs producing goods bearing the brand name or trade name of another person if these goods are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels.

However, this exemption shall be restricted to Rs.90 lakh for the remaining part of the financial year 2008-09.

7. LTUs to pay duty electronically only

The Large Taxpayer Units (LTUs) shall pay the central excise and service tax dues electronically only, through internet banking.

However, in case of difficulties in e-payment, a large taxpayer is permitted to pay the duty through banks (except in such cases where e-payment is mandatory) in the jurisdiction of the LTU Commissionerate only.

[Circular No.878/16 /2008-CX dated 21.11.2008]

8. Guidelines for provisional attachment of property under section 11DDA of the Central Excise Act, 1944

The key points of guidelines issued to implement section 11DDA of the Act to maintain uniformity in its implementation are as follows:-

(a) The types of offences which may be considered for provisional attachment of property (resorted only when the duty or CENVAT Credit alleged is more than Rs. 25 lakhs) are as follows:

1. When the goods are removed without the cover of an invoice and without payment of duty, or without declaring the correct value.
2. CENVAT Credit has been taken without receipt of goods or on the basis of Excise duty invoices or other documents which a person has a reason to believe as not genuine.
3. Excise duty invoice is issued without delivery of goods.
4. Refund or rebate is claimed in a fraudulent manner.

(b) The property which is attached is immovable property/ properties which is/ are used for commercial purpose. If immovable property is not sufficient to protect the interest of revenue then movable property can be attached

(c) The property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 11A or Section 11D of the Act.

(d) Provisional attachment of the property shall be made only between sunrise and sunset.

(e) After attachment, the proper officer shall prepare an inventory and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is distrained.

(f) All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment. The decision of the Commissioner of Central Excise in this regard shall be final.

[Circular No. 874/12/2008-CX dated 30.06.2008]

B. CUSTOMS

Clarification in respect of procedure for sanctioning the custom duty refunds under section 27(2) of the Customs Act, 1962

It has been clarified that in terms of sub-section (2) of section 27, the concerned Assistant/Deputy Commissioner of Customs has to go through:-

- (i) the facts of the case and the material placed before him in order to determine whether the amount claimed by an applicant is refundable to him or not, and
- (ii) the details of audited Balance Sheet and other related financial records, certificate of the Chartered Accountant etc., submitted by the applicant in order to decide whether the applicant had not passed on the incidence of the duty and interest thereon, if any, to any other person.

The Order-in-Original passed by the Assistant/Deputy Commissioner of Customs in the adjudication process should be a speaking order providing specific details including the relevant financial records that are relied upon to arrive at a conclusion whether the burden of duty or interest, as the case may be, has been passed on or not.

Refund orders issued in a routine and casual manner thereby sanctioning the amount but crediting the same to the Consumer Welfare Fund without going through the factual details of the case and the due process as provided in the first proviso cannot be considered as a complete and speaking order

[Circular No.7/2008-Cus dated 28.05.2008].

C. SERVICE TAX

Notification No. 18/2008 ST dated 10.05.2008 has notified 16.05.2008 as the date on which the services introduced by the Finance Act, 2008 have become effective. Further, the amendments made in the existing service vide the Finance Act, 2008 have also become effective from 16.05.2008.

Exemptions:

1. Notification No. 41/2007 ST dated 06.10.2007 which exempts certain specified taxable services received by an exporter and used for export of goods

A. Amendment in Notification No. 41/2007 ST dated 06.10.2007

(a) Insertion of four more services

Notification No. 24/2008 ST dated 10.05.2008 (with effect from 16.05.2008) and Notification No. 33/2008 ST dated 07.12.2008 (with effect from 18.11.2008) have amended Notification No.41/2007 ST dated 06.10.2007 which exempts certain specified taxable services received by an exporter and used for export of goods. The following services received by an exporter and used for export of goods have also been exempted vide these notifications subject to fulfillment of conditions specified therein:-

S.No.	Section of the Finance Act, 1994 as amended	Description of taxable service	Conditions
1.	Section 65(105)(zm)	services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	exporter shall produce evidence to prove that the services specified in column (3) are in relation to goods exported.
2.	Section 65(105)(zzk)	services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	exporter shall produce evidence to prove that the services specified in column (3) are in relation to goods exported.
3.	Section 65(105)(zzzzj)	services of supply of tangible goods for use, without transferring right of possession and effective control of tangible goods, provided to an exporter in relation to goods exported by the exporter.	exporter shall produce evidence to prove that the services specified in column (3) are used in relation to export of goods.
4.	Section 65(105)(j)	services provided by a clearing and forwarding agent in relation to export	exporter shall produce,- (i) invoice issued by clearing and forwarding

S.No.	Section of the Finance Act, 1994 as amended	Description of taxable service	Conditions
		goods exported by the exporter.	agent for providing services specified in column (3) specifying: (a) number and date of shipping bill, (b) description of export goods, (c) number and date of the invoice issued by the exporter relating to export goods, (d) details of all the charges, whether or not reimbursable, collected by the clearing and forwarding agent from the exporter in relation to export goods, (ii) details of other taxable services provided by the said clearing and forwarding agent and received by the exporter, whether or not relatable to export goods.

(b) Condition of not availing the drawback of service tax paid relaxed

As per Notification No. 41/2007 ST dated 06.10.2007, the exporter could claim the refund of the service tax paid during the course of export of goods provided that the said goods have been exported without availing drawback of service tax paid under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

However, now the condition of not availing the drawback of service tax paid has been relaxed by Notification No. 33/2008 ST dated 07.12.2008. Consequently, now the exporter, who is availing drawback of service tax paid, can also claim the refund of the service tax paid during the course of export of goods.

Moreover, the form prescribed for claiming the refund has been suitably amended to give effect to the above amendment.

(c) Time Limit for filing the refund claim extended

The time-limit for filing the refund claim under the aforesaid notification has been extended from sixty days to six months from the end of the relevant quarter during which the said goods have been exported [Notification No. 32/2008 ST dated 18.11.2008].

Clarification in this regard:-

In view of the amended condition, CBEC vide Circular No. 112/06/2009 dated 12.03.2009 has clarified that consequent upon revision of limitation period, any refund claim that is filed within such revised limitation period would be admissible if it is otherwise in order. Consequently, refund claims of service tax on specified taxable services used for exports of goods made in the quarter Mar-Jun 08 could be filed till 31st Dec 08.

The circular further clarifies that the limitation period of six months shall be computed from the date of exports and not from the date of receipt of remittances.

(d) Amendment in the conditions for two services

S.No	Sub-clause of clause (105) of section 65	Description of taxable service	Conditions
1.	Section 65(105)(zzh)	Services provided by a technical testing and analysis agency in relation to technical testing and analysis of said goods where such technical testing and analysis is required to be undertaken as per the written agreement between the exporter and the buyer of the said goods	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring testing and analysis of the said goods; In this regard, Notification No. 32/2008 ST dated 18.11.2008 has clarified that where the buyer of the said goods does not require testing and analysis of the said goods, but testing is statutorily stipulated by domestic rules and regulations, the exporter shall furnish copy of such rules or regulations stipulating testing and analysis of the said goods.
2.	Section 65(105)(zzb)	Services provided by a commission agent, located outside India, and engaged	(vi) <u>Earlier condition:-</u> the refund of service tax shall

		under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him.	be restricted to:- (i) actual amount of service tax paid or (ii) service tax calculated on two per cent of FOB value of export goods, whichever is less. <u>Amended condition:-</u> Notification No. 33/2008 ST dated 07.12.2008 has modified the above condition as follows:- The refund of service tax shall be restricted to:- (i) actual amount of service tax paid Or (ii) service tax calculated on ten per cent of FOB value of export goods, whichever is less.
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B. Clarification on certain procedural issues involved in implementation of Notification No. 41/2007-ST dated 6/10/2007

Circular no. 106 /9 /2008-ST dated the 11.12.2008 and Circular No. 112/06/2009 dated 12.03.2009 have been issued in order to resolve the procedural difficulties in implementation of above mentioned notification. Following issues have been clarified:-

S.No.	Issue	Clarification
1.	One of the conditions of the notification is that the exporter claiming exemption has actually paid the service tax on the specified services. The other condition is that the refund claim shall be accompanied by document	(i) The invoices/challans/bills issued by supplier of taxable service, in conformity with rule 4A of the Service Tax Rules, 1994, are reasonable evidence that the services on which refund is being sought are taxable service. The compliance of condition

	evidencing payment of service tax. In this regard the following issues have been raised. (i) Whether the invoices/bills/challan issued by the service provider, showing service tax amount could be treated as evidence that the exporter has paid the service tax?	that exporter has actually paid the service tax rests with the exporter claiming refund. Therefore, in so far as this condition is concerned, the refund claim should be processed based on furnishing of appropriate invoices/ bills/ challan by the person claiming refund and undertaking to the effect of payment of service tax by him. For the purposes of compliance verification, random checks should be carried out independently and where the refund amount is significant, post refund audit may also be carried out.
	(ii) The invoices produced by the exporters are at times not complete (i.e. does not have STC code of service provider).	(ii) As regards incomplete invoices/bills etc, rule 4A of the Service Tax Rules, 1994 prescribes the statutory requirement. Compliance of this rule requires that the invoices/challan/bills should be complete in all respect. Therefore, the exporter claiming refund of service tax under Notification No. 41/2007-ST should ensure in their own interest that invoices/bills/challan should contain requisite details (name, address and registration no. of service provider, serial number and date of invoice, name and address of service receiver, description, classification and value of taxable service and the service tax payable thereon). Refund claim cannot be allowed on the basis of invoices not having complete details as required verification cannot be carried out by the department on the basis of incomplete invoices.
2.	It has been directed that refund claim must be disposed of within thirty days. Commissioners have stated that it is not practically feasible in all cases to	The difficulties arising in processing of claims may be brought to the notice of the Board. This should enable the field formations to dispose of the pending

	dispose of the refund claim within this time frame in view of procedural and other issues involved in processing of claim.	refund claims expeditiously. Therefore, every effort should be made by field formations to adhere to the prescribed timelines.
3.	The bank deducts certain commissions from the export remittance in lieu of service provided by them. Refund is not allowed on such deduction. Refund should be allowed on the gross remittances.	Refund is admissible on the basis of gross amount received for the exports and deductions made by the banks from export remittances, in lieu of services provided by bank, should not be deducted while granting refund.
4.	For exporters exporting to a customer regularly, the foreign exchange remittance certificates (FIRC) are made on running account basis by the banks. Therefore, it is often not possible to show the linkage between the export invoice and the remittance. This has resulted in denial of refund. Further in case where payments are received by cheque, banks do not issue FIRC and refunds are denied.	In such cases where FIRCs are issued on consolidated basis, the exporters should submit self-certified statement alongwith FIRC showing the details of export in respect of which the FIRC pertains. Refunds should be allowed on such certified statements. However, exporters should maintain a register showing running account which should be reconciled between the export and the remittance periodically. In cases where banks do not issue FIRC for the reason that payments are received by cheque, refund may be allowed on the basis of duly certified bank statement.
5.	Whether refund would be admissible on specified taxable service received prior to the date it is notified in the said notification, if such services are used in relation to goods which are exported subsequent to the date on which such taxable services are notified under notification No. 41/2007-ST.	Being prospective in nature refund is not admissible on such services received prior to the date they are notified in the said notification, even if the goods, in relation to which these services are used, are exported after the date when such services are notified under notification No. 41/2007-ST.
6.	Authorities granting refund are insisting on original documents such as invoice, BL, SB, BRC etc. Such	Normally, certified copy of the documents should be accepted. Only in case of in-depth enquiry original

	documents are required under the law to be kept in the Head office for audit. Refunds are denied on this ground.	documents can be verified.
7.	The service provider providing services to the exporter provides various services. But he has registration of only one service. The refund is being denied on the grounds that the taxable services that are not covered under the registration are not eligible for such refunds.	Notification No. 41/2007 ST provides exemption by way of refund from specified taxable services used for export of goods. Granting refund to exporters, on taxable services that he receives and uses for export do not require verification of registration certificate of the supplier of service. Therefore, refund should be granted in such cases, if otherwise in order. The procedural violations by the service provider need to be dealt separately, independent of the process of refund.
8.	Whether refunds under Notification No. 41/2007-ST, dated 6.10.2007 would be admissible for the quarter July-Sep 2007.	The Notification No.41/2007-ST exempts service tax on specified taxable services used for export of goods. This exemption is operated through the route of refund. Being prospective in nature, refund could only be sanctioned on taxable services provided on or after the date they are notified in the said notification, i.e., 6.10.2007.

2. Exemption from service tax leviable on taxable services provided to GTA for use in transportation of goods by road

Notification No. 29/2008 ST dated 26.06.2008 has exempted from the whole of the service tax, the service of supply of a goods carriage [taxable under section 65(105)(zzzz)], (without transferring right of possession and effective control of such goods carriage), provided by any person to a goods transport agency for transportation of goods by road in the said goods carriage.

Notification No. 1/2009 ST dated 05.01.2009 has exempted from the whole of the service tax, the following mentioned services, provided to a goods transport agency for transportation of goods by road in the said goods carriage,

subject to the condition

that the invoice issued by such service provider, providing services should mention 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:-

- (a) Services provided by a clearing and forwarding agent in relation to clearing and forwarding operations,
- (b) Services provided by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise
- (c) Services provided by a cargo handling agency in relation to cargo handling services
- (d) Services provided by a storage or warehouse keeper in relation to storage and warehousing of goods
- (e) Services provided by any person in relation to business auxiliary service
- (f) Services provided by any other person, in relation to packaging activity
- (g) Services provided by any other person, in relation to support services of business or commerce, in any manner
- (h) Services provided by a processing and clearing house 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.

Others:

3. Following amendments have been made in the Service Tax Rules, 1994:

(i) Amendments in rule 6

(a) Explanation to third proviso to rule 6(1)

For the removal of doubts, it is hereby declared that where the transaction of taxable service is with any associated enterprise, any payment received towards the value of taxable service, in such case shall include 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.

[Notification No. 19/2008 ST dated 10.05.2008]

(b) Rule 6(7B) - option to pay 0.25% of the gross amount in case of services provided in relation to purchase or sale of foreign currency

The person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in sub-clauses (zm) and (zzk) of clause (105) of section 65 of the Finance Act, 1994 as amended shall have the option to pay an amount

calculated at the rate of 0.25% of the gross amount of currency exchanged towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act.

However, such option shall not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider.

Illustration

Buying rate \$US 1 = Rs.38, selling rate \$US 1 = Rs.40

- (i) Person exchanged \$100 for equivalent rupees

Transaction value = Rs.3800 (Rs.38 x 100)

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

- (ii) Person exchanged equivalent rupees for \$100

Transaction value = Rs.4000 (40 x 100)

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

[Notification No. 19/2008 ST dated 10.05.2008]

- (c) Rule 6(1A) - amendment of Form ST-3

Notification No. 31/2008 ST dated 02.09.2008 has amended service tax return Form ST-3. Sub-rule (1A) empowers the assessee to pay advance service tax on his own volition and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period.

- (ii) Amendment in rule 4A

With effect from 16.05.2008, in rule 4A, the words "to a customer" have been substituted by the words "to any person".

[Notification No. 19/2008 ST dated 10.05.2008]

- (iii) Amendment in rule 4B

With effect from 16.05.2008, in rule 4B, the words "to the customer" have been substituted by the words "to the recipient of service".

[Notification No. 19/2008 ST dated 10.05.2008]

- (iv) Form No. ST-3 amended for the returns prepared by SRTPs

Notification No. 10 / 2009-ST dated 17.03.2009 has amended Form No. ST-3 in Service Tax Rules, 1994 to furnish the details of name and identification of Service Tax Return Preparers in case the return has been prepared by them.

4. Following amendments have been made in the Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006:

- (a) With effect from 16.05.2008, Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 have been amended vide Notification No. 20/2008 ST dated 10.05.2008 and Notification No. 21/2008 ST dated 10.05.2008 so as to categorise the newly specified taxable services under Rule 3. Taxable services have been categorised as under:

Sl. No.	Taxable service	Sub-clause of section 65(105)	Export of Services Rules, 2005	Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
1.	Information technology software services	zzzze	*Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
2.	Investment management services provided under ULIP	zzzzf	*Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
3.	Stock exchange services in relation to securities	zzzzg	*Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]
4.	Commodity exchange services	zzzzh	Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]
5.	Processing and clearing house services	zzzzi	Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]
6.	Supply of tangible goods services	zzzzj	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
7.	Internet telecommunication services	zzzu	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]

Note – (1) Category 1 [Rule 3(1)(i)] – For services under this category, criterion of services being in relation to an immovable property situated outside India is prescribed.

(2) Category 2 [Rule 3(1)(ii)] – For services under this category, criterion of services as are performed outside India is prescribed.

(3) Category 3 [Rule 3(1)(iii)] – For services under this category, criterion of location of recipient of service outside India is prescribed.

- (b) Similarly, Notification No. 21/2008 ST dated 10.05.2008 has amended the "Taxation of Service (Provided from Outside India and Received in India) Rules, 2006" by inserting a proviso after clause (iii) of rule 3. The proviso lays down that where the supply of tangible goods service [section 65(105)(zzzzj)] is received by a recipient located in India, then such taxable service shall be treated as taxable service provided from outside India and received in India subject to the condition that the tangible goods supplied for use are located in India during the period of use of such tangible goods by such recipient."
- (c) Notification No. 20/2008 ST dated 10.05.2008 has amended Export of Services Rules, 2005 by inserting a second proviso after the first proviso to clause (iii) of sub-rule (1) of rule 3. The new proviso provides that where the supply of tangible goods service [section 65(105)(zzzzj)] is provided to a recipient located outside India, then such taxable service shall be treated as export of taxable service subject to the condition that the tangible goods supplied for use are located outside India during the period of use of such tangible goods by such recipient.
5. Amendments to abatement notification - Notification No.1/2006 ST dated 01.03.2006
- (a) With effect from 16.05.2008, Notification No. 22/2008 ST dated 10.05.2008 has made the following amendments in Notification No.1/2006 ST dated 01.03.2006 which prescribes various abatements in respect of certain taxable services specified therein:

In the said notification,

S.no.	in case of	for the words	the words that have been substituted are
1.	mandap keeper services	to the client	to any person
2.	convention services	client	recipient of service
3.	erection, commissioning or installation service	customer	recipient of service

(b) Abatement of 30% from the gross amount charged in case of services in relation to chit

Notification No. 27/2008 ST dated 27.05.2008 has amended Notification No. 1/2006 ST dated 01.03.2006 so as to provide an abatement of 30% in case of services provided in relation to chit from the gross amount charged for such service.

"Chit" has been defined to mean a transaction whether called chit, chit fund, chitty, kuri, or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.

6. With effect from 16.05.2008, Notification No. 23/2008 ST dated 10.05.2008 has amended the following notifications in the manner given below:

S.No.	In Notification No.	for the words	the words that have been substituted are
1	18/2002 ST dated 16.12.2002: It exempts the taxable services provided by a consulting engineer to a client on transfer of technology from so much of the service tax leviable thereon as is equivalent to the amount of cess paid on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986.	to a client	to any person
2	33/2004 ST dated 03.12.2004: It exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage, from the whole of service tax leviable thereon.	to a customer	to any person
3	34/2004 ST dated 03.12.2004: It exempts the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax where- (i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.	to a customer	to any person

7. Conditions specified for exemption to services provided to a developer or units of special economic zone-Notification No. 4/2004 dated 31.03.2004 superseded

Notification No.9/2009-ST dated 03.03.2009 has exempted service tax paid on the services provided in relation to the authorized operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone.

Provided that

- (a) Approval of list of services

The developer or units of Special Economic Zone shall get the services required in relation to the authorised operations in the Special Economic Zone approved from the Approval Committee (hereinafter referred to as the specified services);

- (b) Actual use of specified services

The developer or units of Special Economic Zone claiming the exemption actually uses the specified services in relation to the authorised operations in the Special Economic Zone;

- (c) Exemption in the form of refund

The exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone;

- (d) Actual payment of service tax

The developer or units of Special Economic Zone claiming the exemption has actually paid the service tax on the specified services;

- (e) No CENVAT credit of service tax paid on specified services

No CENVAT credit of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone has been taken under the CENVAT Credit Rules, 2004;

- (f) Exemption under no other notification claimed

Exemption or refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone shall not be claimed except under this notification.

Conditions to be satisfied:-

- (a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the developer or units of Special Economic Zone and used in relation to the authorised operations in the Special Economic Zone, and such person shall not be eligible to claim exemption for the specified services:

Provided that where the developer or units of Special Economic Zone and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases exemption for the specified services shall be claimed by that person;

- (b) the developer or units of Special Economic Zone shall claim the exemption by filing a claim for refund of service tax paid on specified services;
- (c) the developer or units of Special Economic Zone shall file the claim for refund to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;
- (d) the developer or units of Special Economic Zone who is not registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the Form annexed hereto with the respective jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;
- (e) the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code (STC) number to the developer or units of Special Economic Zone within seven days from the date of receipt of the said Form;
- (f) the claim for refund shall be filed, within six months or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit, from the date of actual payment of service tax by such developer or unit to service provider;
- (g) the refund claim shall be accompanied by the following documents, namely:-
 - (i) a copy of the list of specified services required in relation to the authorised operations in the Special Economic Zone, as approved by the Approval Committee;
 - (ii) documents for having paid service tax;
 - (iii) a declaration by the Special Economic Zone developer or unit, claiming such exemption, to the effect that such service is received by him in relation to authorised operation in Special Economic Zone.
- (h) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said services have been actually used in relation to the authorised operations in the Special Economic Zone, refund the service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone;
 - (i) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded.

8. Clarification regarding levy of service tax on services provided by “commercial training or coaching centers”

Circular No. 107/01/2009 – ST dated 28.01.2009

Section 65(26) provides that commercial training or coaching means any training or coaching provided by a commercial training or coaching centre;

Section 65(27) defines commercial training or coaching centre as-

- any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons
 - on any subject or field other than the sports,
 - with or without issuance of a certificate and
 - includes coaching or tutorial classes but
 - does not include
- (i) preschool coaching and training centre or
- (ii) any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force;

The aforesaid circular clarifies on the following mentioned issues:-

A. Commercial nature of the institute

The commercial training or coaching does not mean that such institute must have 'commercial' (i.e. profit making) intent or motive. It has to be interpreted in a wider sense.

B. Vocational Training Institutes - whether institutes offering general course on improving communication skills, how to be effective in group discussions or personal interviews, personality development, general grooming and finishing etc are covered

The circular clarifies that such institutes are not covered under the definition of vocational training institute because they only improve the chances of success for a candidate possessing required skill and do not impart training to enable the trainee to seek employment or self-employment.

C. Post school education

(a) Institutes falling under the category of institutes/establishments which issue diploma or certificate recognized by the law for the time being in force-hence not taxable under the category of “commercial coaching and training services”

1. University as defined under section 2(f) of the UGC Act, 1956

2. Deemed University as defined under section 3 of the UGC Act, 1956
3. A college or institution, recognized by UGC, run by a trust/registered society/body corporate/body incorporated under Central or State Act as an institution affiliated to or form as constituent member with a university, providing education up to a bachelors degree, masters degree or diploma of a duration of minimum one academic year.
4. Autonomous colleges as per National Policy on Education, 1986.

- (b) Institutes not falling under the category of institutes/establishments which issue diploma or certificate recognized by the law for the time being in force- hence taxable under the category of “commercial coaching and training services”

An institution or establishment which is derecognized by the professional councils (such as All India Council for Technical Education-AICTE, Medical Council of India-MCI, Indian Council for Agricultural Research-ICAR, Bar Council of India-BCI) created through independent Union Acts.

- (c) Deemed to be University not required to obtain the approval of AICTE to start any programme in technical or management education leading to an award, including degrees in disciplines covered under the AICTE Act, 1987

From the year 2005 onwards, a technical institution or establishment (which is otherwise recognized being a university, or affiliate college) has to obtain AICTE approval to fall under the category of institutes/establishments which issue diploma or certificate recognized by the law for the time being in force. However 'Deemed to be University' have been exempt from this requirement.

- (d) Taxability of the courses conducted

In India, due to change in legal provisions, an institute/establishment may be recognized by the law at one time and not recognized at other. However, the taxability of the courses conducted would depend on the legal status of such institute or establishment at the point of time when such service is provided (i.e. course is conducted).

9. Whether the theatre owners are required to pay service tax on the rent received by them from distributors?

Screening of movie is not taxable except in the following case:-

Where the distributor leases out the hall for screening of the movie,

- (i) the theater owner gets a fixed rent from the distributor.
- (ii) the profit or loss from exhibiting the film is borne by the distributor.

In such a case, the theatre owner provides the taxable service of 'renting of immovable property' for furtherance of business or commerce and is accordingly liable to pay service tax on the rent received from the distributor.

[Circular No. 109/03/2009 dated 23.02.2009]

10. Service Tax (Provisional Attachment of Property) Rules, 2008

These rules introduced by Notification No.30/2008 ST dated 01.07.2008 with effect from 01.07.2008 provide as follows:-

Rule 3 - Procedure for provisional attachment of property

(a) The Assistant or the Deputy Commissioner of Central Excise, after due verification of the facts and circumstances of the case, for the purpose of protecting the interest of revenue, during the pendency of any proceeding under section 73/73A of the Finance Act, 1994, may forward a proposal for provisional attachment of property belonging to a person on whom a notice has been served under section 73(1)/73A(3) of the Act, to the Commissioner in the format prescribed in these Rules.

(b) The Commissioner may cause service of a notice on such person who can make a submission in this regard within 15 days of service of the notice.

(c) Upon consideration of submission, the Commissioner may pass an order to attach the property provisionally.

Rule 4 - The property that can be attached

(1) Value of property attached shall be of value as nearly as may be equivalent to that of the amount of pending revenue against such person.

(2) The movable property of such person shall be attached only if the immovable property available for attachment is not sufficient to protect the interest of revenue.

Rule 5 - Obligations of person whose property has been attached provisionally

The said person or his representative shall not mortgage, lease, transfer, deliver or deal with the attached property in any manner except with the previous approval of the Commissioner of Central Excise.

Rule 6 - Period for which order of provisional attachment of property remains in force

Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the service of the order passed.

However, Chief Commissioner of Central Excise may grant an extension for a maximum period of two years.

11. Guidelines in respect of provisional attachment of property

Circular No. 103/06/2008 ST dated 01.07.2008 has issued the following guidelines in respect of provisional attachment of property for the purposes of protecting the interests of revenue during the pendency of any proceedings under section 73 or section 73A of the Act:

1. The following types of offences committed by a service provider or an exporter may be considered for provisional attachment of property:-

(a) Provision of a taxable service without the cover of an invoice or any other

document, as prescribed, and without payment of tax;

- (b) Provision of a taxable service without declaring the correct value for payment of service tax, where a portion of value of taxable service, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account.
 - (c) Taking of CENVAT credit without the receipt of goods or services specified in the document based on which the said credit has been taken;
 - (d) Taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;
 - (e) Issue of service tax invoice or any other document, without providing or to be providing a taxable service, as specified in the said invoice or other document;
 - (f) Claiming of refund or rebate in a fraudulent manner such as on invoice or other documents which a person has reason to believe as not genuine.
2. The provisional attachment of property shall be resorted only in a case where the service tax or CENVAT credit alleged to be involved is more than Rs.25 lakh.
3. Personal property of a sole proprietor or partners shall not be attached. Personal property means any movable or immovable property which is in personal use of the sole proprietor or partner. However, immovable property/ properties which is/ are used for commercial purpose may be provisionally attached. Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.
- It should also be ensured that such attachment does not hamper the normal business of the assessee. This would mean that inputs required for provision of a service should not be attached by the department.
4. Provisional attachment of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under section 73 or section 73A of the Act.
5. The provisional attachment of the property of the concerned person shall be made after sunrise and before sunset and not otherwise.
6. After provisional attachment of the property, the Central Excise Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to defaulter or the person from whose charge the property is distrained.
7. All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from provisional attachment. The decision of the Commissioner of Central Excise in this regard shall be final.

12. Clarification of issues relating to service tax levy on goods transport road services

Circular No. 104/07/2008-ST dated 06.08.2008 has clarified the following issues relating to service tax levy on goods transport by road services:

- (i) Issue: GTA provides service to a person in relation to transportation of goods by road in a goods carriage. The service provided is a single composite service which may include various intermediary and ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing. For the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In such a case, whether the intermediary or ancillary activities is to be treated as part of GTA service and the abatement should be extended to the charges for such intermediary or ancillary service?

Clarification: GTA provides a service in relation to transportation of goods by road which is a single composite service. GTA also issues consignment note. The composite service may include various intermediate and ancillary services provided in relation to the principal service of the road transport of goods. Such intermediate and ancillary services may include services like loading/unloading, packing/unpacking, transshipment, temporary warehousing etc., which are provided in the course of transportation by road. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F.No. 334/4/2006-TRU dated 28.2.2006 (para 3.2 and 3.3) and F. No. 334.1/2008-TRU dated 29.2.2008 (para 3.2 and 3.3), a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases is based on essential character by applying the principle of classification enumerated in section 65A. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it.

- (ii) Issue: GTA providing service in relation to transportation of goods by road in a goods carriage also undertakes packing as an integral part of the service provided. It may be clarified whether in such cases service provided is to be classified under GTA service.

Clarification: Cargo handling service [Section 65(105)(zi)] means loading, unloading, packing or unpacking of cargo and includes the service of packing

together with transportation of cargo with or without loading, unloading and unpacking. Transportation is not the essential character of cargo handling service but only incidental to the cargo handling service. Where service is provided by a person who is registered as GTA service provider and issues consignment note for transportation of goods by road in a goods carriage and the amount charged for the service provided is inclusive of packing, then the service shall be treated as GTA service and not cargo handling service.

- (iii) Issue: Whether time sensitive transportation of goods by road in a goods carriage by a GTA shall be classified under courier service and not GTA service?

Clarification: On this issue, it is clarified that so long as, (a) the entire transportation of goods is by road; and (b) the person transporting the goods issues a consignment note, it would be classified as 'GTA Service'.

13. Clarifications of service tax issues relating to units in SEZ

Circular No. 105/08/2008 -ST dated 16.09 2008 has clarified the service tax issues relating to units in Special Economic Zones. It has been observed that there has been lack of clarity in the field formations administering service tax as regards the applicability of service tax levy on units located in SEZ. This lack of clarity has resulted in certain problems especially with respect to service tax administration. The issues and the proposed actions are mentioned below:

- (i) Non-payment of service tax by SEZ units providing taxable service outside SEZ

There is no exclusion to SEZs in the Chapter V of the Finance Act, 1994 Taxable services received by SEZ units and SEZ developers for consumption within the SEZ are exempt for service tax under notification No. 4/2004-ST, dated 31.3.2004. However, service tax is applicable on taxable services provided by SEZ units, except such services which are exempt by notification No. 4/2004-ST. The C &AG, has pointed out instances, where SEZ units in Chennai & Cochin were providing taxable services like manpower supply service, technical testing and analysis service etc., to units / persons outside SEZ, without payment of service tax. In this regard the Ministry of Commerce (MOC) has observed that monitoring and collection of service tax does not come under the jurisdiction of the Development Commissioner and that such responsibility rests with the jurisdictional service tax (or CX & ST) authorities under the Central Board of Excise and Customs. Therefore, field formations should ensure that SEZs units, providing taxable services to any person for consumption in DTA (or providing any taxable service which is otherwise not exempt), or is otherwise liable to pay service tax under the service tax law, take registration with the jurisdictional service tax authorities and discharge their service tax liability in terms of the Finance Act, 1994.

- (ii) Refund of Service Tax on taxable services used for the purposes of exports of goods by SEZ units

Refund of service tax paid on certain taxable services used in export of goods is permitted under notification 41/2007-ST. This notification prescribes that the refund would be

allowed by the jurisdictional Deputy Commissioner/Assistant Commissioner of Central Excise. Doubts have arisen as to the authority that would process these claims when made by SEZ, i.e., the SEZ authorities or jurisdictional service tax authorities. As stated above, the Ministry of Commerce has already opined that administering the service tax law is responsibility of CBEC. Refund of service tax is to be processed by the respective jurisdictional authority administering service tax law. Accordingly, it is clarified that the SEZ units, claiming refund of service tax, should take registration with the jurisdictional ST authorities and file their claims there.

RECENT AMENDMENTS IN DIRECT TAX LAWS AND INDIRECT TAX LAWS

Students are advised to study thoroughly the Supplementary Study Paper-2008 on Direct Tax Laws and Indirect Tax Laws for the Final Course. This contains the amendments made by the Finance Act, 2008 as well as the significant Notifications/Circulars issued between 01.05.2007 and 30.04.2008. This Supplementary Study Paper is available at various branch and regional sales counters of the Institute. This RTP contains the significant amendments made through notifications/circulars issued between 1.5.2008 and 30.04.2009.

This is very important since considerable weightage is being given to the latest amendments in the examinations. Students may note that the Board of Studies has come out with a publication "Select Cases in Direct and Indirect Taxes [2008] – An Essential Reading for Final Course". This contains important recent judgements of Supreme Court, High Court and Appellate Tribunal in both Direct Taxes and Indirect Taxes.