INDIRECT TAXES / INDIRECT TAX LAWS

AMENDMENTS BY THE FINANCE (NO. 2) ACT, 2009

I. EXCISE

A. Amendments in the Central Excise Act, 1944

1. Certain types of offences and circumstances excluded from the purview of the compounding provisions - Section 9A(2)

Section 9A(2) provides that any offence under Chapter II of the Act may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.

Amendments in sub-section (2)

A. For the words "such compounding amount", the words "such compounding amount and in such manner of compounding" shall be substituted.

B. Finance (No. 2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding:-

1. Person allowed to compound once in respect of any of the offences under the provisions of clause (a), (b), (bb), (bbb), (bbbb) or (c) of section 9(1)
A person who has been allowed to compound once in respect of any of the following offences:-

(i) contravention of any of the provisions of section 8 or of a rule made under clause (iii) or clause (xxvii) of sub-section (2) of section 37;

(ii) evasion of the payment of any duty payable under this Act;

(iii) removal of any excisable goods in contravention of any of the provisions of this Act or any rule made there under or in any way concerns himself with such removal;

(iv) - acquisition of possession of, or

- in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or

- in any other manner deals with

any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;

(v) contravention of any of the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products;

(vi) failure to supply any information which he is required by rules made under this Act to supply, or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information.

2. Offence committed by the accused also an offence under the Narcotic Drugs and Psychotropic Substances Act

A person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. Person allowed to compound once for goods of value exceeding Rs. 1 crore

A person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore.

4. Person convicted by the court

A person who has been convicted by the court under this Act on or after 30.12.2005.

(Effective from 19.08.2009)

2. Chartered Accountants can also be nominated for conducting the valuation audit - Section 14A

Situation prior to amendment

Section 14A, inter alia, provides that only a cost accountant can be nominated by the Chief Commissioner of Central Excise to conduct the special audit in case where any Central Excise Officer not below the rank of an Assistant Commissioner/Deputy Commissioner of Central Excise is of the opinion that the value has not been correctly declared or determined by a manufacturer or any person.

Amendment made by Finance (No.2) Act, 2009

Section 14A has been amended to provide that now; the Chartered Accountants may also be nominated for the aforementioned purpose.

For the purpose of this section, "Chartered Accountant" shall have the meaning assigned to it in section 2(1)(b) of the Chartered Accountants Act, 1949.

Note : Section 2(1)(b) of the Chartered Accountants Act, 1949 defines Chartered Accountant as a person who is a member of the Institute of Chartered Accountants of India.

(Effective from 19.08.2009)

3. Chartered Accountants can also be nominated for conducting the CENVAT audit - Section 14AA

Situation prior to amendment

Section 14A, inter alia, provides that only a cost accountant can be nominated by the Commissioner of Central Excise to conduct the special audit in case he has a reason to believe that the credit of duty availed of or utilised under the rules made under this Act by a manufacturer of any excisable goods -

(a) is not within the normal limits having regard to the nature of the excisable goods produced or manufactured, the type of inputs used and other relevant factors, as he may deem appropriate;

(b) has been availed of or utilised by reason of fraud, collusion or any wilful mis-statement or suppression of facts.

Amendment made by Finance (No.2) Act, 2009

Section 14AA has been amended to provide that now; the Chartered Accountants may also be nominated for the aforementioned purpose.

For the purpose of this section, “Chartered Accountant” shall have the meaning assigned to it in section 2(1)(b) of the Chartered Accountants Act, 1949.

(Effective from 19.08.2009)

4. Definition of “authority” substituted by a new definition - Section 23A(e)

Definition of “authority” prior to amendment

“Authority” means the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F of the Customs Act, 1962.

Amendment made by Finance (No.2) Act, 2009

“Authority” means the Authority for Advance Rulings, constituted under sub-section (1), or authorized by the Central Government under sub-section (2A), of section 28F of the Customs Act, 1962.

(Effective from 19.08.2009)

5. High Court empowered to condone the delay in filing the appeal - Section 35G

Section 35G(2) of the Act provides that the Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be filed within 180 days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party.

Sub-section (2A) inserted after sub-section (2)

Sub-section (2A) inserted after sub-section (2), with effect from 01.07.2003, provides that the High Court may admit an appeal after the expiry of the period of 180 days referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

6. High Court empowered to condone the delay in filing the reference application and memorandum of cross objections - Section 35H

   (1) Section 35H(1) provides that in respect of the order of the Appellate Tribunal (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), passed under section 35C of the Act before 01.07.2003,

   the Commissioner of Central Excise or the other party may file a reference application to the High Court within 180 days of the date upon which he is served with notice of the aforesaid order.

   (2) Section 35H(3) provides that the person against whom such application has been made, may, notwithstanding that he may not have filed such application, file, a memorandum of cross-objections against any part of the order in relation to which an application for reference has been made within 45 days of the receipt of the notice.

Sub-section (3A) inserted after sub-section (3)

Sub-section (3A) inserted after sub-section (3) with effect from 01.07.1999 provides that the High Court may admit a reference application or permit the filing of a memorandum of cross objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (3) above, if it is satisfied that there was sufficient cause for not filing the same within that period.

7. Central Government empowered to make rules regarding manner of compounding - Section 37(2)(id)

Section 37 empowers the Central Government to make rules generally to carry into effect the purposes of the Central Excise Act, 1944.

Clause (id) of sub-section (2) to section 37 provides that in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the amount to be paid for compounding under section 9A(2).

Amendment made by Finance (No.2) Act, 2009

Finance (No.2) Act, 2009 has substituted the words "for compounding and the manner of compounding" instead of the words "for compounding".

(Effective from 19.08.2009)

B. Amendments in the Central Excise Tariff Act, 1985

1. Excise duty rate

There is no change in the mean CENVAT rate of 8% ad valorem. However, the concessional excise duty rate of 4% has been increased to 8%, with certain exceptions. The major items on which the 4% rate has been retained are:

1. Food items such as sugar confectionary, biscuits with retail price exceeding Rs.100/kg, cakes and pastries, sherbets, scented supari etc.;
2. Paraxylene;
3. Drugs and pharmaceutical products of chapter 30;
4. Paper, paperboard and articles made therefrom;
5. Footwear of retail price exceeding Rs.250 per pair but not exceeding Rs.750 per pair;
6. Pressure cookers
7. Power –driven pumps designed for handling water;
8. Water filtration/ purification equipment;
9. Specified textile machinery;
10. Compact fluorescent lamps (CFL) and vacuum and gas filled bulbs of retail price not exceeding Rs.20 per bulb; and
11. Medical equipment

Above list is not an exhaustive list. Consequent upon increase in excise duty rate from 4% to 8%, abatement rates have been revised suitably on items covered under RSP (Retail Sale price) based assessment.

2. Process of adding or mixing certain ingredients to betel nut in any form would amount to manufacture

In respect of 'betel nut product known as supari', it is prescribed that the process of adding or mixing certain ingredients to betel nut in any form would be a process amounting to manufacture. For this purpose, note 6 is being inserted in Chapter 21 of the First Schedule to the Central Excise Tariff Act. A corresponding note is being inserted in Chapter 8 so as to exclude this product from its purview.

II CUSTOMS

A. Amendments in the Customs Act, 1962

1. Refund of import duty in certain cases - new section 26A inserted after section 26

Section 26 of the Customs Act, 1962 contains the provisions for refund of the export duty. Section 26A inserted after section 26 provides for refund of the import duty. The section reads as follows:—

Conditions for claiming the refund of duty

Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, subject to the fulfillment of the following conditions:-

(a) Goods are defective/not as per specifications

The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) Goods identified as imported goods

The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) No drawback claimed

The importer does not claim drawback under any other provisions of this Act; and

(d) Importer exports the goods/relinquishes title to goods and abandons them/destroys or renders them commercially valueless

(i) The goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer,

in such manner as may be prescribed and within a period not exceeding 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

However, the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months.

Moreover, nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Application for refund of import duty

An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such form and in such manner as may be prescribed.

Meaning of relevant date

For the purposes of this sub-section:-

S.No.	In cases where	relevant date means the date
1.	the goods are exported out of India	on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51
2.	where the title to the goods is relinquished	of such relinquishment
3.	the goods are destroyed or rendered commercially valueless	of such destruction or rendering of goods commercially valueless

No refund shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund may be allowed.

(Effective from 19.08.2009)

2. Authority for Advance Ruling under Income Tax Act, 1962 may also be notified by the Central Government to act as Authority under the customs law - Sub-section (2A) to (2D) inserted after section 28F(2)

In section 28F of the Customs Act, after sub-section (2), the following sub-sections shall be inserted with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, namely:—

Sub-section (2A)

Notwithstanding anything contained in sub-sections (1) and (2), or any other law for the time being in force, the Central Government may, by notification in the Official Gazette, authorise an Authority constituted under section 245-O of the Income-tax Act, 1961, to act as an Authority under this Chapter.

Sub-section (2B)

On and from the date of publication of notification under sub-section (2A), the Authority constituted under sub-section (1) shall not exercise jurisdiction under Chapter V-B of the Act.

Sub-section (2C)

For the purposes of sub-section (2A), the reference to “an officer of the Indian Revenue Service who is qualified to be a Member of Central Board of Direct Taxes” in clause (b) of sub-section (2) of section 245-O of the Income Tax Act, 1961 shall be construed as reference to “an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Board”.

Sub-section (2D)

On and from the date of the authorization of Authority under sub-section (2A), every application and proceeding pending before the Authority constituted under sub-section (1) shall stand transferred to the Authority so authorised from the stage at which such proceedings stood before the date of such authorization.

3. High Court empowered to condone the delay in filing the appeal - Section 130

Section 130(2) of the Act provides that the Commissioner of Customs or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be filed within 180 days from the date on which the order appealed against is received by the Commissioner of Customs or the other party.

Sub-section (2A) inserted after sub-section (2)

Sub-section (2A) inserted after sub-section (2) with effect from 01.07.2003 provides that the High Court may admit an appeal after the expiry of the period of 180 days referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.

4. High Court empowered to condone the delay in filing the reference application and memorandum of cross objections - Section 130A

(1) Sub-section (1) provides that in respect of the order of the Appellate Tribunal (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment), passed under section 129B of the Act before 01.07.2003,

the Commissioner of Customs or the other party may file a reference application to the High Court within 180 days of the date upon which he is served with notice of the aforesaid order.

(2) Sub-section (3) provides that the person against whom such application has been made, may, notwithstanding that he may not have filed such application, file, a

memorandum of cross-objections against any part of the order in relation to which an application for reference has been made within 45 days of the receipt of the notice.

Sub-section (3A) inserted after sub-section (3)

Sub-section (3A) inserted after sub-section (3) with effect from 01.07.1999 provides that the High Court may admit a reference application or permit the filing of a memorandum of cross objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (3) above, if it is satisfied that there was sufficient cause for not filing the same within that period.

5. Certain types of offences and circumstances excluded from the purview of the compounding provisions - Section 137(3)

Section 137(3) provides that any offence under Chapter XVI of the Act may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.

Amendments in sub-section (3)

A. For the words "such compounding amount", the words "such compounding amount and in such manner of compounding" shall be substituted.

B. Finance (No.2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding:-

  (a) a person who has been allowed to compound once in respect of any offence under sections 135 and 135A;

  (b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely:—

    (i) the Narcotic Drugs and Psychotropic Substances Act, 1985;

    (ii) the Chemical Weapons Convention Act, 2000;

    (iii) the Arms Act, 1959;

    (iv) the Wild Life (Protection) Act, 1972;

  (c) a person involved in smuggling of goods falling under any of the following, namely:—

    (i) goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology in Appendix 3 to Schedule 2 (Export Policy) of ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;

    (ii) goods which are specified as prohibited items for import and export in the ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;

(iii) any other goods or documents, which are likely to affect friendly relations with a foreign State or are derogatory to national honour;

(d) person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(e) person who has been convicted under this Act on or after 30.12.2005.

(Effective from 19.08.2009)

6. Central Government empowered to make rules regarding manner of compounding - Section 156(2)(h)

Section 156 empowers the Central Government to make rules generally to carry into effect the purposes of the Customs Act, 1962.

Section 156(2)(h) provides that in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the amount to be paid for compounding under section 137(3).

Amendment made by Finance (No.2) Act, 2009

Finance (No.2) Act, 2009 has substituted the words "for compounding and the manner of compounding" instead of the words "for compounding".

(Effective from 19.08.2009)

7. Clause (ai) and (aii) inserted in section 157(2)

Section 157 empowers the Central Board of Excise and Customs to make regulations generally to carry into effect the purposes of the Customs Act, 1962.

Finance (No.2) Act, 2009 has inserted clause (ai) and (aii) after clause (a) of section 157(2) which read as follows:-

In particular and without prejudice to the generality of the foregoing power, regulations under section 157 may provide for

Clause (ai)

the manner of export of goods, relinquishment of title to the goods and abandoning them to customs and destruction or rendering of goods commercially valueless in the presence of the proper officer under section 26A(1)(d).

Clause (ai)

the form and manner of making application for refund of duty under sub-section (2) of section 26A.

(Effective from 19.08.2009)

B. Amendments in the Customs Tariff Act, 1975

1. Additional duty of customs - Second proviso inserted to section 3(2)

Section 3 of the Customs Tariff Act, 1975 levies on any article which is imported into India, an additional duty of customs, equal to the excise duty for the time being leviable on a like article if produced or manufactured in India.

Finance (No.2) Act, 2009 has inserted second proviso to section 3(2) after first proviso. It reads as under:-

In the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value.

(Effective from 19.08.2009)

2. Machinery provisions of the Customs Act, 1962 made applicable to certain duties imposed under the Customs Tariff Act, 1975

An amendment has been made with retrospective effect that the provisions of the Customs Act, 1962 and the rules and regulations made there under, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the following mentioned duties as they apply in relation to duties leviable under that Act:-

(a) Safeguard duty imposed under section 8B

(b) Specific Safeguard Duty on imports from China imposed under section 8C

(c) Countervailing duty on subsidized articles imposed under section 9

(d) Anti-Dumping Duty imposed under section 9A

(a) Safeguard duty – Sub-section (4A) inserted to section 8B

Finance (No.2) Act, 2009 has inserted sub-section (4A) after sub-section (4), with effect from 14.05.1997, which reads as follows:-

The provisions of the Customs Act, 1962 and the rules and regulations made there under, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(b) Power of Central Government to impose Transitional Product Specific Safeguard Duty on imports from China – Sub-section (5A) inserted to section 8C

Finance (No.2) Act, 2009 has inserted sub-section (5A) after sub-section (5), with effect from 11.05.2002, which reads as follows:-

The provisions of the Customs Act, 1962 and the rules and regulations made there under, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(c) Countervailing duty on subsidized articles - Sub-section (7A) inserted to section 9

Finance (No.2) Act, 2009 has inserted sub-section (7A) after sub-section (7), with effect from 01.01.1995, which reads as follows:-

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(d) Anti-Dumping Duty - Sub-section (8) substituted with the new sub-section (8) to section 9A

Finance (No.2) Act, 2009 has substituted sub-section (8) with the new sub-section, with effect from 01.01.1995, which reads as follows:-

The provisions of the Customs Act, 1962 and the rules and regulations made there under, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

3. Section 9A amended - Anti-Dumping Duty

A. Sub-section (1) amended

Sub-section (1) provides that where any article is exported from any country or territory to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Finance (No.2) Act, 2009 has substituted the words “any article is exported by an exporter or producer” for the words “any article is exported” in sub-section (1).

(Effective from 19.08.2009)

B. Sub-section (6A) inserted after sub-section (6)

The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer.

However, where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

(Effective from 19.08.2009)

4. Custom duty rate

There is no change in the overall rate structure of customs duties. As such, the peak rate for industrial goods has been retained at 10% and the major ad valorem rates of 5% and 7.5% have also been retained.

III. SERVICE TAX

Amendments in Chapter V and VA of the Finance Act, 1994

1. 3 new services brought under the service tax net - Section 65

With effect from September 1, 2009, service tax has been levied on the following three new categories of services:-

A. Service provided in relation to transport of coastal goods and goods transported through inland water including National Waterways.

Finance (No.2) Act, 2009 has inserted sub-clause (zzzzl) in section 65(105). Now, any service provided or to be provided to any person, by any other person, in relation to transportation of coastal goods (as defined under the Customs Act, 1962) and transportation of goods through inland waters including National Waterways has been made liable to service tax.

Explanation to section 65(105) (zzzzl) reads as under:-

For the purpose of this sub-clause:-

(a) "coastal goods" has the meaning assigned to it in clause (7) of section 2 of the Customs Act, 1962;

(b) "national waterway" has the meaning assigned to it in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985;

(c) "inland water" has the meaning assigned to it in clause (b) of section 2 of the Inland Vessels Act, 1917.

B. Cosmetic and plastic surgery service.

Finance (No.2) Act, 2009 has inserted sub-clause (zzzzk) in section 65(105). Now, any service provided or to be provided to any person, by any other person, in relation to cosmetic surgery or plastic surgery has been made liable to service tax.

However, the surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma shall not be liable to tax.

In this respect, an earlier circular of Board provides the indicative surgeries that can be taxed under this service listed as under:-

(a) Mammoplasty

(b) Bletharoplasty (eyelid surgery)

(c) Abdominoplasty (tummy tuck)

(d) Buttock augmentation and lift

(e) Rhinoplasty (reshaping of nose)

(f) Otoplasty (ear surgery)

(g) Rhytidectomy (face lift)

(h) Liposuction (removal of fat from the body)

(i) Brow lift

(j) Cheek augmentation

(k) Facial implants

(l) Lip augmentation

(m) Forehead lift

(n) Cosmetic dental surgery

(o) Orthodontics

(p) Aesthetic dentistry

(q) Laser skin surfacing

C. Legal consultancy service.

Finance (No.2) Act, 2009 has inserted sub-clause (zzzzm) in section 65(105). Now, any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law has been made liable to service tax. However, in the following cases, the legal consultancy services provided shall not be liable to service tax:-

(a) Any service provided by way of appearance before any court, tribunal or authority.

(b) The service provider and/or service recipient is an individual.

Explanation to section 65(105) (zzzzm) reads as under:-

For the purpose of this sub-clause clause, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual.

(Effective from 01.09.2009)

2. Amendment in the scope of existing taxable services - Section 65

(i) Business auxiliary service

Prior to amendment

Prior to amendment, the service/process that amounts to manufacture as defined under section 2(f) of the Central Excise Act, 1944 was excluded under the category of 'business auxiliary services'.

Amendment made by Finance (No.2) Act, 2009

The definition of business auxiliary service under section 65(19) of the Finance Act, 1994 has been amended to exclude any activity that amounts to manufacture of excisable goods. Therefore, manufacture of non-excisable goods for or on behalf of the client shall attract service tax. Besides, clause (b) and (c) have been inserted in the Explanation to section 65(19) so as to define the terms – 'manufacture' and 'excisable goods'.

Now, the clause (vii) of section 65(19) of the Finance Act, 1994 reads as follows:-

"Business auxiliary service" means any service in relation to a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any activity that amounts to manufacture of excisable goods.

Clause (b) and (c) of Explanation to section 65(19)(vii) reads as follows:-

(b) "excisable goods" has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944;

(c) "manufacture" has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944.

(ii) Stock broker services

Prior to amendment

The definition of a stock broker included the sub-broker as well.

Amendment made by Finance (No.2) Act, 2009

The definition of stock-broker (in stock-broker service) under section 65(101) has been amended to exclude sub-broker from its ambit. Consequently, sub-brokers would be outside the purview of service tax.

(iii) Information technology software services

Prior to amendment

In item (v) and (vi) of section 65(105)(zzzze), under the information technology software service, "acquiring the right to use the information technology software ….." is taxable.

Amendment made by Finance (No.2) Act, 2009

The same has been amended to "providing the right to use the information technology software …..". This service is amended with retrospective effect from 16.05.2008.

Now, item (v) and (vi) of Section 65(105)(zzzze) reads as under:-

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

(vi) providing the right to use information technology software supplied electronically.

(iv) Transport of goods in containers by rail services

Prior to amendment

Any service provided or to be provided to any person, by any other person, other than Government railway, in relation to transport of goods in containers by rail is taxable under section 65(105)(zzzp).

Amendment made by Finance (No.2) Act, 2009

Finance (No.2) Act, 2009 has imposed service tax on goods transported by railways including Government railways, whether in containers or otherwise.

Now, the amended section 65(105)(zzzp) reads as under:-

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

(Effective from 01.09.2009)

3. Revision of orders by the Commissioner abolished - Section 84 substituted by new section 84

Section 84 has been amended, to abolish the power of revision by the Commissioner of Central Excise prescribed under section 84. Revision of orders by the Commissioner has been replaced, with filing of departmental appeals before Commissioner of Central Excise (Appeals), with a view to align the appeal procedure of service tax with that of Central Excise.

New section 84 reads as follows:-

(1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

(2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

Explanation — For the removal of doubts, it is hereby declared that above mentioned provision would come into effect from 19.08.2009. All cases decided before this date would continue to be governed by the existing provisions only.

(Effective from 19.08.2009)

4. Appeal to Appellate Tribunal under section 86 cannot be filed against the order passed by Commissioner of Central Excise under section 84 – Section 86

Prior to amendment

Earlier, revision order passed by a Commissioner of Central Excise under section 84 could be appealed against to the Appellate Tribunal under section 86 either by:-

(i) the aggrieved assessee

or

(ii) Commissioner of Central Excise at the directions of Committee of Chief Commissioners of Central Excise.

Amendment made by Finance (No.2) Act, 2009

With effect from 19.08.2009, appeal to Appellate Tribunal under section 86 cannot be filed against the order passed by Commissioner of Central Excise under section 84. Therefore, sub-section (1) and (2) of section 86 have been consequentially amended and read as under:-

Sub-section (1)

Any assessee aggrieved by an order passed by a Commissioner of Central Excise under section 73 or section 83A, or an order passed by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order.

Sub-section (2)

The Committee of Chief Commissioners of Central Excise may, if it objects to any order passed by the Commissioner of Central Excise under section 73 or section 83A, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

(Effective from 19.08.2009)

5. Central Government empowered to frame rules in relation to the date for determination of rate of service tax and the place of provision of taxable service – Section 94(2)

Finance (No.2) Act, 2009 has empowered Central Government under section 94 to make rules with respect to the place of supply of taxable services, and the relevant date for determination of service tax. Clause (hhh) has been inserted after clause (hh) to section 94(2) for the said pupose.

(Effective from 19.08.2009)

6. Central Government empowered to remove difficulty by making an order – Section 95(1F)

Sub-section (1F) inserted after sub-section (1E) in section 95 provides that:-

If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance (No.2) Act, 2009, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty.

However, no such order shall be made after the expiry of a period of one year from 19.08.2009.

(Effective from 19.08.2009)

7. Amendment in the definition of "authority" under section 96A(d)

Prior to amendment

"Authority" means the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F of the Customs Act, 1962.

Amendment made by Finance (No.2) Act, 2009

"Authority" means the Authority for Advance Rulings, constituted under sub-section (1), or authorised by the Central Government under sub-section (2A), of section 28F of the Customs Act, 1962 (52 of 1962).

(Effective from 19.08.2009)

SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2008 TO 30.04.2009 AND BUDGET NOTIFICATIONS

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 assessees 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) Rule17(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) Rule17(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) Rule17(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.

(iii) 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.

(iv) Rule 24A inserted – Seized records that have not been relied upon to be returned within the prescribed time limit

Notification No. 17/2009 dated 07.07.2009 has inserted rule 24A, after rule 24, which reads as follows:-

The books of accounts or other documents, seized by the Central Excise Officer or produced by an assessee or any other person, which have not been relied on for the issue of notice under the Act or the rules made there under, shall be returned within thirty days of the issue of said notice or within thirty days from the date of expiry of the period for issue of said notice.

Records can be retained for reasons to be recorded in writing

However, the Commissioner of Central Excise may order for the retention of such books of accounts or documents, for reasons to be recorded in writing and the Central Excise Officer shall intimate to the assessee or such person about such retention.

2. CENVAT Credit Rules, 2004:

I. Amendments in the CENVAT Credit Rules, 2004

(a) Rule 2(k) - Amendment in the definition of "inputs"

Explanation 2 to rule 2(k) has been amended so as to exclude cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods from the definition of 'inputs'.

Now, Explanation 2 to rule 2(k) reads as follows:-

Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods.

[Notification No. 16/2009 - CE (NT) dated 07.07.2009]

(b) Rule 3(5B) - Provisions of rule 3(5B) made applicable to an output service provider also

New rule 3(5B) provides that if the value of any,

(i) input, or

(ii) capital goods before being put to use,

on which CENVAT credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

However, if the said input or capital goods is subsequently used in the manufacture of final products or the provision of taxable services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

[Notification No. 16/2009 - CE (NT) dated 07.07.2009]

(c) 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)×(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 by a 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)×(CVD/100)]

(d) 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.

[Notification No. 35/2008-CE (NT) dated 24.09.2008]

(e) Rule 6(3)(i)

Earlier, rule 6(3)(i) provided that the provider of both taxable and exempted output services, opting not to maintain separate accounts, shall pay an amount equal to 8% of value of the exempted services and the manufacturer of both dutiable and exempted goods, opting not to maintain separate accounts, shall pay an amount equal to 10% of the value of the exempted goods.

Notification No. 16/2009 - CE (NT) dated 07.07.2009 has amended rule 6(3)(i) so as to prescribe that a provider of both taxable and exempted services, who does not maintain separate accounts of inputs, shall pay an amount equal to 6% of the value of exempted services instead of 8% and the manufacturer of both dutiable and exempted goods, opting not to maintain separate accounts, shall pay an amount equal to 5% of the value of the exempted goods instead of 10%.

(f) 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 the 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 2 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 1 to Rule 6(3)].
3.	Assessee opting for option (i) is required to pay an amount equivalent to 10% (now 5% w.e.f. 07.07.2009) of value of exempted goods or 8% (now 6% w.e.f. 07.07.2009) 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% (now 6% w.e.f. 07.07.2009) 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 service distributor can also opt for option (i) or option (ii)?	As input service distributor 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 inputs 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% (now 5% w.e.f. 07.07.2009) of the value of the exempted goods or 8% (now 6% w.e.f. 07.07.2009) 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. Section 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 - Notification No. 16/2009 - CE (NT) dated 07.07.2009 has amended rule 6(3)(i) so as to prescribe that a provider of both taxable and exempted services, who does not maintain separate accounts of inputs, shall pay an amount equal to 6% of the value of exempted services instead of 8% and the manufacturer of both dutiable and exempted goods, opting not to maintain separate accounts, shall pay an amount equal to 5% of the value of the exempted goods instead of 10%.

The clarification provided in the above mentioned circular is applicable to the new rule 6(3) also.

(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 Personal Ledger Account, 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 Personal Ledger Account only. Hence, the duty paid by utilizing the CENVAT credit shall now be included while computing the limit of Rs. 100 lakh.

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 through Personal Ledger Account or by utilizing CENVAT credit or both.

(b) Notification No. 17/2006 CE (NT) dated 01.08.2006 inter alia exempts the assessees 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. Hence, the duty paid by utilizing the CENVAT credit shall now be included while computing the limit of Rs. 100 lakh.

Consequently, now the asseessees 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 through Personal Ledger Account or by utilizing CENVAT credit or both.

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 (as amended by Notification No. 02/2009 dated 11.02.2009 and Notification No. 9/2009 dated 07.07.2009) 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, plastic bags and printed laminated rolls.

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 destrained.

(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]

9. Packaged or canned software exempt from countervailing duty

On packaged or canned software falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985, countervailing duty exemption has been provided on the portion of the value which represents the consideration for transfer of the right to use such software, subject to following conditions:-

(1) The transfer of the right to use shall be for commercial exploitation including the right to reproduce, distribute and sell such software and the right to use the software components for the creation of and inclusion in other information technology software products.

(2) The person providing the right to use shall make a declaration to this effect to the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, in respect of such transfer of the right to use for commercial exploitation.

(3) The person providing the right to use shall be registered under section 69 of the Finance Act, 1994 read with rule 4 of the Service Tax Rules, 1994.

Explanation. - For the purposes of this exemption, “packaged software or canned software” means software developed to meet the needs of variety of users, and which is intended for sale or capable of being sold off the shelf.

The reason behind such exemption is that the portion of the value which represents the consideration for transfer of the right to use such software is leviable to service tax as ‘information technology software service’.

[Notification No. 22/2009 CE dated 07.07.2009]

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. 26/2009 ST dated 19.08.2009 has notified 01.09.2009 as the date on which the services introduced by the Finance (No.2) Act, 2009 have become effective. Further, the amendments made in the existing services vide the Finance (No.2) Act, 2009 have also become effective from the said date.

1. Exemptions:

(a) Notification No. 41/2007 ST dated 06.10.2007 superseded by Notification No. 17/2009 dated 07.07.2009

Situation prior to amendment

Notification No. 41/2007-ST dated 06.10.2007 provided for refund of service tax paid on services, which though not in the nature of input services, were relatable to export of goods. This notification had been amended several times in order to ensure speedier grant of refunds to the exporters. Moreover, a number of circulars had also been issued thereby clarifying certain procedural issues involved in its implementation.

Amendment made by Notification No. 17/2009 ST dated 07.07.2009

The said notification supersedes the Notification No. 41/ 2007-ST dated 06.10.2007. The refund scheme has been revamped to ensure speedier grant of refunds to the exporters. The salient feature of the new scheme is the simplified format for filing the refund claims. The said notification exempts the taxable services specified in column (3) of the Schedule below (hereinafter referred to as specified services) received by an exporter and used for export of goods (hereinafter referred to as said goods), from the whole of the service tax leviable thereon under section 66 and section 66A subject to the conditions specified in the corresponding entry in column (4) of the Schedule.

Sr. No.	Classification of sub-clauses of clause (105) of section 65 of the Finance Act, 1994	Taxable Services	Conditions
(1)	(2)	(3)	(4)
1.	(d)	Service provided to an exporter by an insurer, including a reinsurer carrying on general insurance business in relation to insurance of said goods.	Exporter shall submit document issued by the insurer, including re-insurer, for payment of insurance premium and the document shall be specific to export goods and shall be in the name of the exporter.
2.	(zn)	Service provided by a port or any person authorised by the port in respect of the export of said goods.	
3.	(zzh)	Service provided by a technical testing and analysis agency, in relation to technical testing and analysis of said goods.	
4.	(zzi)	Service provided by a technical inspection and certification agency in relation to inspection and certification of export goods.	
5.	(zzl)	Service provided by other port or any person authorised by that port in respect for export of said goods.	

6.	(zzp)	(i) Service provided for transport of said goods from the inland container depot to the port of export; (ii) Service provided to an exporter in relation to transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported.	(i) Exporter shall certify that the benefit of exemption provided vide notification number 18/2009-S.T. has not been claimed; and (ii) details, those are specified in the invoice of exporter relating to export goods, are specifically mentioned in the lorry receipt and the corresponding shipping bill.
7.	(zzzp)	(i) Service provided for transport of said goods from the inland container depot to the port of export, and (ii) services provided to an exporter in relation to transport of export goods directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported.	Invoice issued by the exporter in relation to export goods shall indicate the inland container depot or port or airport from where the goods are exported.
8.	(zzzd)	Specialised cleaning services namely disinfecting, exterminating, sterilising or fumigating of containers used for export of said goods provided to an exporter.	
9.	(zza)	Service provided for storage and warehousing of said goods.	
10.	(f)	Service provided by a courier agency to an exporter in relation to transportation of time-sensitive documents, goods or articles relating to	(i) The receipt issued by the courier agency shall specify the importer-exporter code (IEC) number of the exporter, export invoice number, nature of courier,

		export, to a destination outside India.	destination of the courier including name and address of the recipient of the courier; and (ii) exporter produces documents relating to the use of courier service to export goods.
11.	(h)	Service provided by a custom house agent in relation to export goods exported by the exporter.	Exporter shall produce,- (i) invoice issued by custom house agent for providing services specified in column (3) specifying,- (a) number and date of shipping bill; (b) number and date of the invoice issued by the exporter relating to export goods; (c) details of all the charges, whether or not reimbursable, collected by the custom house agent from the exporter in relation to export goods; (ii) details of other taxable services provided by the said custom house agent and received by the exporter, whether or not relatable to export goods.
12.	(zm)	(i) Service provided in relation to collection of export bills; (ii) Service provided in relation to advising export letters of credit such as advising commission, confirmation charges; amendment, (iii) Service of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.	

13.	(zzk)	Service of purchase or sale of foreign currency including money changing provided to an exporter in relation to export goods.	
14.	(zzzzj)	Service 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.	
15.	(j)	Service provided by a clearing and forwarding agent in relation to export goods exported by the exporter.	Exporter shall produce,- (i) invoice issued by clearing and forwarding 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.
16.	classified under any sub-clause of clause (105) of section 65.	Payment of service tax paid on services commonly known as terminal handling charges.	

A. Points to be noted in this regard:-

1. The exemption shall be claimed by the exporter for the specified service received and used by him for export of the said goods.

2. The exemption claimed by the exporter shall be provided by way of refund of service tax paid.

3. The exporter claiming the exemption should have actually paid the service tax on the specified service to its provider.

4. No CENVAT credit of service tax paid shall be taken under the CENVAT Credit Rules, 2004.

5. The person liable to pay service tax under section 68 of the Finance Act, 1994 shall not be eligible to claim exemption for the specified service.

6. The manufacturer-exporter, who is registered as an assessee under the Central Excise Act, 1944 or the rules made thereunder, shall claim the exemption by filing a claim for refund of service tax paid on specified service to the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture, in Form A-l.

7. The exporter who is not so registered under the provisions referred to in point (6) above, shall before filing a claim for refund of service tax, file a declaration in Form A-2 with the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, having the jurisdiction over the registered office or the head office, as the case may be, of such exporter.

8. The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code (STC) number to the exporter [referred to in point (7) above] within seven days from the date of receipt of the said Form A-2.

9. The exporter, referred to in point (6) or (7) , shall file the claim for refund of service tax to the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture, registered office or the head office, as the case may be, of such exporter in Form A-l.

10. The claim for refund shall be filed within one year from the date of export of the said goods.

    Explanation.- For the purposes of this clause, the date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962 (52 of 1962);

11. For each taxable service specified in column (3) of the Schedule above, the exporter shall enclose all the documents specified in corresponding entry in column (4) of the said Schedule and the Form A-l with the claim of refund.

12. No refund claim shall be allowed if the same is for an amount less than Rs. 500.

13. Where -

    (a) the total amount of refund sought under a claim is upto 0.25% of the total declared free on board value of export;

    (b) the exporter is registered with Export Promotion Council sponsored by the Ministry of Commerce or the Ministry of Textiles;

    (c) subject to the provisions of (a) and (b) above, each document specified in clause (b) and in column (4) of the said Table shall be enclosed with the claim;

    (d) invoice, bill or challan, or any other document issued in the name of the exporter, showing payment for such service availed and the service tax payable shall be submitted in original after being certified in the manner specified in sub-clauses (e) and (f);

    (e) the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be certified by the exporter himself and where the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;

    (f) the documents enclosed with the claim shall contain a certificate from the exporter or the authorised person to the effect that specified service, to which the document pertains, has been received, the service tax payable thereon has been paid and the specified service has been used for export of goods under the shipping bill number;

14. Where the amount of refund sought under a claim is more than 0.25% of the declared free on board value of export, such certification, shall be done by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 or the Income Tax Act, 1961, as the case may be.

B. Refund of service tax by Assistant Commissioner/Deputy Commissioner of Central Excise

The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself, -

(i) that the claim filed is complete in every respect;

(ii) that all the documents requiring certification have been filed after due certification; and

(iii) about the arithmetical accuracy of the claim, shall refund the service tax paid on the specified service within a period of one month from the receipt of said claim.

However, where the Assistant Commissioner/Deputy Commissioner of Central Excise has reason to believe that the claim, or the enclosed documents are not in order or that there is a reason to deny such refund, he may, after recording the reasons in writing, take action, in accordance with the provisions of the said Act and the rules made there under.

C. Recovery of service tax erroneously refunded

Where any refund of service tax paid on specified service utilised for export of said goods has been paid to an exporter but the sale proceeds in respect of the said goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period, such service tax refunded shall be recoverable under the provisions of the said Act and the rules made there under, as if it is a recovery of service tax erroneously refunded.

(b) Notification No. 18/2009 – ST dated 07.07.2009 – Services in relation to 'transport of goods by road' and 'commission paid to foreign agents' exempted from service tax subject to certain conditions

The aforesaid notification exempts the taxable services specified in column (3) of the Schedule below (hereinafter referred to as specified services) received by an exporter and used for export of goods (hereinafter referred to as said goods), from the whole of the service tax leviable thereon under section 66 and section 66A subject to the conditions specified in the corresponding entry in column (4) of the Schedule.

Serial No.	Classification of sub-clauses of clause (105) of section 65 of the Finance Act, 1994	Description of the taxable service	Conditions
(1)	(2)	(3)	(4)
1.	(zzp)	Service provided to an exporter for transport of the said goods by road from any container freight station or inland container depot to the	The exporter shall have to produce the consignment note, by whatever name called, issued in his name.

		port or airport, as the case may be, from where the goods are exported; or Service provided to an exporter in relation to transport of said goods by road directly from their place of removal, to an inland container depot, a container freight station, a port or airport, as the case may be, from where the goods are exported.	
2.	(zzb)	Service provided by a commission agent located outside India and engaged 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.	(1) The exporter shall declare the amount of commission paid or payable to the commission agent in the shipping bill or bill of export, as the case may be. (2) The exemption shall be limited to one per cent of the free on board value of export goods for which the said service has been used. (3) The exemption shall not be available on the export of canalised item, project export, or export financed under lines of credit extended by Government of India or EXIM Bank, or export made by Indian partner in a company with equity participation in an overseas joint venture or wholly owned subsidiary. (4) The exporter shall submit with the half yearly return

			after certification of the same as specified in clause (g) of the proviso - (i) the original documents showing actual payment of commission to the commission agent; and (ii) a copy of the agreement or contract entered into between the commission agent located outside India and the exporter in relation to sale of export goods, outside India :

General conditions to be satisfied:-

(a) the exemption shall be available to an exporter who,-

(i) informs the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory or the regional office or the head office, as the case may be, in Form EXP1, before availing the said exemption;

(ii) is registered with an export promotion council sponsored by the Ministry of Commerce or the Ministry of Textiles, as the case may be;

(iii) is a holder of Import-Export Code Number;

(iv) is registered under section 69 of the said Act;

(v) is liable to pay service tax under sub-section (2) of section 68 of said Act, read with sub-clause (iv) or sub-clause (v) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994, for the specified service;

(b) the invoice, bill or challan, or any other document issued by the service provider to the exporter, on which the exporter intend to avail exemption, shall be issued in the name of the exporter, showing that the exporter is liable to pay the service tax in terms of item (v) of clause (a);

(c) the exporter availing the exemption shall file the return in Form EXP2 every six months of the financial year, within fifteen days of the completion of the said six months;

(d) the exporter shall submit with the half yearly return, after certification, the documents in original specified in clause (b) and the certified copies of the documents specified in column (4) of the said Schedule;

(e) the documents enclosed with the return shall contain a certification from the exporter or the authorised person, to the effect that taxable service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill number on the said document.

(f) where the exporter is a proprietorship concern or partnership firm, the documents enclosed with the return shall be certified by the exporter himself and where the exporter is a limited company, the documents enclosed with the return shall be certified by the person authorised by the Board of Directors;

(g) where the amount of service tax in respect of the service specified against serial No. 2 of the Schedule exceeds one per cent of the free on board value of the export then, the amount in excess of the said one per cent shall be paid within the period specified under rule 6 of the Service Tax Rules, 1994.

(c) Exemption from service tax leviable on taxable services provided to GTA for use in transportation of goods by road

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 (j), (k), (zr), (zza), (zzb), (zzzf), (zzzq) and (zzzzj)

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 to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances.

2. Amendments in the Service Tax Rules, 1994:

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]

(ii) Amendment of Form ST-3

(i) Notification No. 31/2008 ST dated 02.09.2008 has amended service tax return Form ST-3.

(ii) Form 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.

(iii) 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]

(iv) 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]

3. 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, the 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	zzzzf	*Category 3 [Rule	Category 3 [Rule 3(iii)]

	management services provided under ULIP		3(1)(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)]
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) Amendment in the "Taxation of Service (Provided from Outside India and Received in India) Rules, 2006"

(i) 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.

(ii) Territorial jurisdiction

Notification No. 21/2009-ST dated 07.07.2009 has brought the services provided to or from installations, structures and vessels in the entire Continental Shelf of India and Exclusive Economic Zone of India within the ambit of the provisions relating to service tax.

Accordingly, the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (containing the rules regarding the import of services) have been amended vide Notification 22/2009-ST dated 07.07.2009 to extend the definition of India to include installations, structures and vessels in the entire Continental Shelf of India and Exclusive Economic Zone of India.

Definition of "India" prior to amendment

Rule 2(e) defined India as follows:-

India includes the designated areas in the Continental Shelf and Exclusive Economic Zone of India as declared by the notifications of the Government of India.

Definition as amended by Finance (No.2) Act, 2009

Rule 2(e) has been substituted by the new rule 2(e) which defines "India" as follows:-

India includes the installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone of India.

(c) Amendment in the Export of Services Rules, 2005

Notification No. 20/2008 ST dated 10.05.2008 has amended the 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.

4. 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.

5. 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	to a customer	to any person

	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.		

6. 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 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.

7. 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).

8. 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]

9. 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.

10. 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 assessees. 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.

11. 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)(zr)] 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'.

12. 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 (now Notification No.9/2009-ST dated 03.03.2009). However, service tax is applicable on taxable services provided by SEZ units, except such services which are exempt by notification No. 4/2004-ST (now Notification No.9/2009-ST dated 03.03.2009). 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.

Note : The aforesaid circular is also applicable to the new refund scheme notified.

13. Twenty two export promotion councils exempted under 'club or association services'

Services provided by following twenty two export promotion councils, which were earlier taxable under the category of club or association services, have been made exempted from the levy of service tax under the said category of service:-

1. Federation of Indian Export Organizations
2. Engineering Export Promotion Council
3. Project Exports Promotion Council of India
4. Basic Chemicals, Pharmaceuticals and Cosmetics Export Promotion Council
5. Chemicals and Allied Products Export Promotion Council, World Trade Centre
6. Council for Leather Exports
7. Sports Goods Export Promotion Council
8. Gem and Jewellery Export Promotion Council
9. Shellac Export Promotion Council
10. Cashew Export Promotion Council
11. The Plastics Export Promotion Council
12. Export Promotion Council for Export Oriented Units and Special Economic Zones Units
13. Pharmaceutical Export Promotion Council
14. Apparel Export Promotion Council
15. Carpet Export Promotion Council

16. Cotton Textile Export Promotion Council
17. Export Promotion Council for Handicrafts
18. Handloom Export Promotion Council
19. Indian Silk Export Promotion Council
20. Powerloom Development Export Promotion Council
21. Synthetic and Rayon Textile Export Promotion Council
22 Wool and Woollens Export Promotion Council

The exemption shall remain in force till 31.03.2010.

[Notification 16/2009-ST dated 07.07.2009]

14. Rate of service tax reduced from 12% to 10%

Notification No. 8/2009-S.T. dated 24-2-2009 has reduced the rate of service tax from 12% to 10% with effect from 24.02.2009.

15. Amendment in 'tour operator services'

Situation prior to amendment

Private bus operators, who operate buses on specific inter-state or intra-state routes, were required to pay service tax as they ply their buses having 'contract carriage permits'. Therefore, they were covered under the definition of tour operators. On the other hand, the State Undertakings run buses, which ran on the same route carrying passengers, were not liable to pay the service tax as these buses bear 'stage carriage permit'.

Amendment made by Notification No. 20/2009-ST, dated 07.07.2009

In order to bring parity between the two, the services provided by the tour operators having a contract carriage permit for inter-state/intra-state transportation of passengers have been fully exempted from service tax, provided such transportation is not in relation to tourism or conducted tours, charter or hire service.

16. Amendment in 'banking and other financial services'

Situation prior to amendment

Money changer services provided in relation to sale and purchase of foreign currency was made liable to service tax with effect from 16.05.2008.

Amendment made by Notification no 19/2009 – ST dated 07.07.2009

In respect of such services, exemption has been granted when such services are provided by one Scheduled bank to another Scheduled bank.

17. Gross amount charged for a works contract under the composition scheme

Explanation to rule 3 of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides that the gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

Above Explanation has been modified so as to allow the benefit of optional composition scheme only to such works contracts where the taxpayer declares the entire value of goods (whether supplied under any other contract for a consideration or otherwise) and services used in the execution of the works contract as the 'gross value' charged for the works contract. According to the new explanation, the gross amount charged for the works contract shall include the following:

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

b. the value of all the services that are required to be provided for the execution of the works contract;

c. the charges for obtaining machinery and tools used in the execution of the said works contract

Following shall be excluded from the gross amount charged:

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

b. the cost of machinery and tools used in the execution of the said works contract.

The aforementioned explanation shall not apply to the current works contracts where either the execution has commenced or any payment has been made in relation to the said contract on or before the 07.07.2009.

(Notification No.23/2009 – ST dated 07.07.2009)