

BASIC CONCEPTS APPLICABLE TO ALL SERVICES

3.1 PAYMENT ONLY ON RECEIPT

It is to be noted that though the service provider charges service tax in his bill raised on his client as and when the service is provided, the service tax is payable to the Government only when the value of taxable services is 'received'. Thus, if a chartered accountant raises a bill for auditing services say, on 15th November, 2009 for Rs.110300/- (including service tax Rs.10,300/-) and the client pays his bill only in December 2009, the liability to pay service tax to the Government would arise only in December 2009. This alleviates the major grievance of the service providers who otherwise would be required to pay service tax on amounts not received or not likely to be received. The *situs* of taxation is on service provided but the payment of service tax to the Government is deferred till the receipt of the value of the taxable service. This concept is dealt with later under payment of service tax in Chapter 5.

3.2 SERVICE TAX PAYABLE ON ADVANCE RECEIVED

Service tax is payable as soon as any advance is received as:

- (i) the taxable service includes "service to be provided", and
- (ii) the payments received before, during, or after the provision of taxable service, form part of the gross amount charged for the taxable services.

3.3 CONCEPT OF DEEMED SERVICE NON-EXISTENT

Section 67(1)(iii) and Service Tax (Determination of Value) Rules, 2006 (as inserted w.e.f. 19.04.2006) make provisions for valuation even when consideration is not ascertainable. However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, section 67 and Service Tax (Determination of Value) Rules, 2006 cannot apply.

In *Bharti Cellular Ltd. v. CCE (2005) 179 ELT 334 (CESTAT)*, it has been held that no service tax is payable if SIM cards are given free as bonus, as when value of service is

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zero, its 10.3% (that time it was 8%) will also be zero.

However, this principle applies only when there is really a 'free service' and not when its cost is recovered through different means.

3.4 SERVICES PROVIDED BY MUTAL CONCERNS TO ITS MEMBERS SUBJECT TO SERVICE TAX

The explanation after clause (121) of section 65 clarifies that taxable service includes any service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration.

3.5 EXEMPTIONS FROM SERVICE TAX FOR ALL SERVICES

Section 93 of the Finance Act, 1994 empowers the Central Government to exempt taxable services either generally or subject to the specified conditions from levy of whole of the service tax or any part thereof. This power is exercised by issuing notifications or special orders. The following general exemptions from payment of whole of the amount of service tax are available to the service providers:

3.5.1 Basic exemption for small service providers - Notification No. 6/2005 ST dated 01.03.2005

With effect from 01.04.2005, an exemption scheme (hereinafter referred to as the 'said exemption') for small service providers has been prescribed by the Central Government.

The taxable services of "aggregate value not exceeding Rs.10,00,000" in any financial year shall be exempted from the whole of service tax leviable thereon. The exemption is however, subject to the following conditions:

- (i) the provider of taxable service has the option not to avail the exemption contained and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;
- (ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input service under Rule 3 or Rule 13 of CENVAT Credit Rules, 2004, used for providing the said taxable service, for which the said exemption is availed;
- (iii) the provider of taxable service shall not avail CENVAT credit under Rule 3 of CENVAT Credit Rules, 2004 on capital goods received in his premises during the period in which the said exemption is availed;
- (iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services which are
 - received on or after the date on which the service provider starts paying service tax, and

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- are used for the provision of taxable services for which service tax is payable;
- (v) the provider of taxable service who starts availing the said exemption shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing the said exemption;
- (vi) the balance of CENVAT credit lying unutilized in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilized as per rule 3(4) of the CENVAT Credit Rules, 2004 and shall lapse on the day such service provider starts availing the said exemption;
- (vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and
- (viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed Rs.8,00,000 in the preceding financial year.

As per Explanation B to the Notification “aggregate value not exceeding Rs.10,00,000” shall include the sum total of first consecutive payments totaling to Rs.10,00,000 received during a financial year towards the gross amount, as prescribed under section 67, charged by the service provider towards the taxable services. However, payments received towards such gross amount, which are exempt from whole of service tax, shall not be covered within such limit of Rs.10,00,000.

In case of goods transport agency services, the payments received towards taxable service in respect of which the service tax thereon is paid by the person paying freight pursuant to section 68(2) shall not be considered for the above limit of Rs.10,00,000.

Exemption not available in certain cases

The above exemption shall not apply to:

- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of **another** person (use of own brand name will not be a disqualification for the exemption); or
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

As per Explanation A to the Notification “brand name” or “trade name” means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a

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connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person.

The following taxable services have been notified for the purposes of sub-section (2) of section 68:

(A) the services,-

- (i) in relation to telecommunication service;
- (ii) in relation to general insurance business;
- (iii) in relation to insurance auxiliary service by an insurance agent; and
- (iv) in relation to transport of goods by road in a goods carriage, where the consignor or consignee of goods is,-
 - (a) any factory registered under or governed by the Factories Act, 1948;
 - (b) any company formed or registered under the Companies Act, 1956;
 - (c) any corporation established by or under any law;
 - (d) any society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India;
 - (e) any co-operative society established by or under any law;
 - (f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder; or
 - (g) any body corporate established, or a partnership firm registered, by or under any law
- (v) in relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case may be.
- (vi) in relation to sponsorship service provided to any body corporate or firm located in India.

(B) any taxable service provided or to be provided from a country other than India and received in India, under section 66A of the Finance Act, 1994.

3.5.2 Exemption to all services provided to United Nations or International Organisation - *Notification No. 16/2002 ST dated 02.08.2002*

Central Government has exempted all the taxable service specified in section 65 of the Act provided by any person to the United Nations or an International Organisation, from whole of the service tax leviable under section 66 of the Act.

International Organisation means an International Organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 to which the provisions of the schedule to the said Act apply.

3.5.3 Exemption to services received by a developer or units of a special economic zone, (refund of service tax paid) - Notification No.9/2009-ST dated 03.03.2009

Taxable services provided in relation to the authorised 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, are exempt from the whole of the service tax leviable thereon under section 66 of the Act.

The exemption is subject to the following conditions:

- (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) No exemption claimed under any other notification:** *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.*

The exemption shall be given effect to in the following manner:

- (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:*

However, 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

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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/Deputy Commissioner of Central Excise;*
- (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/Deputy Commissioner of Central Excise;*
- (e) the jurisdictional Assistant/Deputy Commissioner of Central Excise 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/Deputy Commissioner of Central Excise 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/Deputy Commissioner of Central Excise 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.*

Services provided by SEZ for consumption in DTA liable to service tax: Circular No. 105/08/2008 -ST dated 16.09 2008 has clarified that special economic zone units:

- (i) *providing taxable services to any person for consumption in domestic tariff area; or*
- (ii) *providing any taxable service which is otherwise not exempt; or*
- (iii) *which are otherwise liable to pay service tax under the service tax law*

have to take registration with the jurisdictional service tax authorities and discharge their service tax liability in terms of the Finance Act, 1994.

3.5.4 Exemption to goods and materials sold by service provider to recipient of service - Notification No. 12/2003 ST dated 20.6.2003

With effect from 1.07.2003 so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service has been exempt from the service tax leviable thereon under section 66, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.

However, the said exemption shall apply only in such cases where:

- (i) no credit of duty paid on such goods and materials sold, has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- (ii) where such credit has been taken by the service provider on such goods and materials, such service provider has paid the amount equal to such credit availed before the sale of such goods and materials.

3.5.5 Exemption to services provided by or to the Reserve Bank of India - Notification No. 22/2006 ST dated 31.05.2006

Following taxable services are exempted from the whole of the service tax leviable thereon:

- (i) taxable services provided or to be provided to any person, by the Reserve Bank of India;
- (ii) taxable services provided or to be provided by any person, to the Reserve Bank of India when the service tax for such services is liable to be paid by the Reserve Bank of India under sub-section (2) of section 68 of the said Finance Act read with rule 2 of the Service Tax Rules, 1994;
- (iii) taxable services received in India from outside India by the Reserve Bank of India under section 66A of the Finance Act, 1994.

3.5.6 Exemption to services provided by Technology Business Incubator / Science and Technology Entrepreneurship Park – Notification No. 9/2007 ST dated 01.03.2007

With effect from 01.04.2007, all taxable services provided or to be provided by

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Technology Business Incubators (TBI)/Science and Technology Entrepreneurship Parks (STEP) recognized by National Science and Technology Entrepreneurship Board (NSTEBD) of the Department of Science & Technology have been exempted from the whole of service tax leviable thereon. The exemption contained in this notification shall be subject to the following conditions:

- (i) the STEP or the TBI, who intends to avail the exemption, shall furnish the requisite information containing the details of the incubator along with the information received from each incubatee to the concerned Assistant/Deputy Commissioner of Central Excise before availing the exemption; and
- (ii) the STEP or the TBI shall thereafter furnish the information in the formats mentioned above in the same manner before the 30th day of June of each financial year.

3.5.7 Exemption to services provided by an incubatee located within the premises of a Technology Business Incubator / Science and Technology Entrepreneurship Park – Notification No. 10/2007 ST dated 01.03.2007

With effect from 01.04.2007, taxable services provided or to be provided by an (incubatee) entrepreneur located within the premises of a Technology Business Incubator (TBI)/Science and Technology Entrepreneurship Park (STEP) recognized by National Science and Technology Entrepreneurship Board (NSTEBD) of the Department of Science and Technology Government of India have been exempted from the whole of the service tax leviable thereon subject to the following conditions:-

- (i) the entrepreneur enters into an agreement with the TBI or the STEP as an incubatee, to enable himself to develop and produce hi-tech and innovative products; and
- (ii) the total business turnover of such entrepreneur does not exceed Rs.50 lakh during the previous financial year.

Further, the exemption contained in this notification shall apply for a period of 3 years from the date on which such entrepreneur enters into an agreement with the TBI or the STEP.

The exemption for taxable services under this notification shall not be available for any taxable services provided or to be provided immediately after the total business turnover of the entrepreneur exceeds Rs.50 lakh during a given financial year.

3.5.8 Exemption to services provided in relation to delivery of contents of a cinema in digitized encrypted form - Notification No. 12/2007 ST dated 01.03.2007

Taxable services provided or to be provided, under an agreement, by any person to other person who has the right to authorise any person to exhibit cinematograph film are exempt from the whole of the service tax leviable thereon subject to the following conditions:

- (i) that the service provided or to be provided is in relation to the delivery of the content of the cinematograph film; and
- (ii) that the content of such film, being in digitized form, after its encryption, is transmitted directly to a cinema theatre for exhibition through the use of satellite, microwave or terrestrial communication line and not by any physical means including CD and DVD.

For the purposes of this notification,-

- (a) "cinematograph film" means a film certified under section 5A of the Cinematograph Act, 1952;
- (b) "cinema theatre" means a place which is licenced under Part III of the Cinematograph Act, 1952, or under any other law for the time being in force in a state for the exhibition of a cinematograph film.

3.5.9 Exemption to services provided for the official use of a foreign diplomatic mission or consular post in India - Notification No. 33/2007 ST dated 23.05.2007

All taxable services provided by any person, for the official use of a foreign diplomatic mission or consular post in India are exempt from whole of the service tax leviable thereon. The Notification also prescribes a procedure for availing the said exemption.

3.5.10 Exemption to services provided for the personal use or the use of the family members of diplomatic agents or career consular officers posted in a foreign diplomatic mission or consular post in India – Notification No. 34/2007 ST dated 23.05.2007

All taxable services provided by any person, for the personal use or for the use of the family members of diplomatic agents or career consular officers posted in a foreign diplomatic mission or consular post in India are exempt from whole of the service tax leviable thereon. The Notification also prescribes a procedure for availing the said exemption.

3.5.11 Service tax not leviable on fee collected by public authorities while performing statutory functions/duties under the provisions of a law - Circular No. 96/7/2007 ST dated 23.08.2007

It has been clarified that service tax shall not be leviable on fee collected by public authorities while performing statutory functions/duties under the provisions of a law. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service.

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A number of sovereign/public authorities (i.e. an agency constituted/set up by government) perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For example, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury.

The Circular explains that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

3.6 EXEMPTION FROM SERVICE TAX FOR SPECIFIC SERVICES

While the exemptions discussed in point no. 3.5 are available in respect of all taxable services, there are certain exemptions which are available only in respect of specific services. They are discussed below:

3.6.1 Exemption to specified services received by an exporter (refund of service tax paid) and used for export of goods - Notification No. 17/2009 ST dated 07.07.2009

The taxable services specified in column (3) of the Schedule (specified services) received by an exporter and used for export of goods (said goods) are exempt from 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.

It may be noted that -

- (i) the exemption shall be claimed by the exporter for the specified service received and used by him for export of the said goods;*
- (ii) the exemption claimed by the exporter shall be provided by way of refund of service tax paid;*
- (iii) the exporter claiming the exemption should have actually paid the service tax on the specified service to its provider;*

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- (iv) no CENVAT credit of service tax paid shall be taken under the CENVAT Credit Rules, 2004;

A. The exemption shall be given effect to in the following manner:

- (a) 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.
- (b) 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-I.
- (c) The exporter who is not so registered under the provisions referred to in point (b) 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. Circular No. 101/4/2008 ST dated 12.05.2008 has clarified that the refund claims can be filed from any premises / office of a merchant exporter provided the same is registered for service tax purposes under the Finance Act, 1994 or rules made thereunder. However, even in such cases, if the merchant exporter so desires, he may file refund claim at the location where his head office/registered office is located.
- (d) 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.
- (e) the exporter, referred to in point (b) or (c), 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-I.
- (f) The claim for refund shall be filed within one year from **the date of export** of the said goods. **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.
- (g) 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-I with the claim of refund.
- (h) No refund claim shall be allowed if the same is for an amount less than Rs. 500.
- (i) Where -
- (i) the total amount of refund sought under a claim is upto 0.25% of the total declared free on board value of export;
- (ii) the exporter is registered with Export Promotion Council sponsored by the Ministry

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of Commerce or the Ministry of Textiles;

- (iii) 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;*
- (iv) 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);*
- (v) 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;*
- (vi) 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;*
- (j) 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.*

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Schedule

Sl. No.	Taxable services and their classification in terms of sub-clauses of clause (105) of section 65 of the Finance Act, 1994	Description of the taxable services	Conditions
(1)	(2)	(3)	(4)
1.	General Insurance Services - (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.	Port Services - (zn)	Service provided by a port or any person authorised by the port in respect of the export of said goods.	
3.	Technical Testing and Analysis Services - (zzh)	Service provided by a technical testing and analysis agency, in relation to technical testing and analysis of said goods.	
4.	Technical Inspection and Certification Services - (zzi)	Service provided by a technical inspection and certification agency in relation to inspection and certification of export goods.	
5.	Other Port Services - (zzl)	Service provided by other port or any person authorised by that port in respect for export of said goods.	

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6.	Transport of Goods by Road by Goods Transport Agencies - (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.	Transport of Goods by Rail Service - (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.	Cleaning Services other than in relation to Agriculture, Horticulture, Animal Husbandry or Dairying - (zzzd)	Specialised cleaning services namely disinfecting, exterminating, sterilising or fumigating of containers used for export of said goods provided to an exporter.	
9.	Storage and Warehousing Services - (zza)	Service provided for storage and warehousing of said goods.	
10.	Courier Services - (f)	Service provided by a courier agency to an exporter in relation to transportation of	(i) The receipt issued by the courier agency shall specify the importer-exporter code (IEC) number of the

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

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13.	Foreign exchange Broker's services - (zzzk)	Service of purchase or sale of foreign currency including money changing provided to an exporter in relation to export goods.	
14.	Supply of tangible goods services - (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.	Clearing and forwarding agents' services - (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.	

Refund not admissible on service received prior to the date of being notified in the said notification: *Being prospective in nature refund is not admissible on such services received prior to the date they are notified in the said notification, even if the goods, in relation to which these services are used, are exported after the date when such services are notified under the said notification.*

3.6.2 Exemption to specified services used for export of goods and received by an exporter where the liability to pay the tax on such services is on the exporter himself, on reverse charge basis – Notification No. 18/2009 ST dated 07.07.2009

The exemption would be available:

- (1) on two taxable services, viz. (i) Transport of Goods by road from any container freight station (CFS) or inland container depot (ICD) to port/airport of exports or from the place of removal (i.e. factory) to CFS, ICD, port or airport of exports; (ii) service provided by a foreign commission agent who causes sale of goods abroad;*
- (2) to exporters of goods who are registered with export promotion councils and are holding import export code number and are also registered with service tax/central excise authorities as they are otherwise required to pay service tax on the above services received, under reverse charge mechanism;*
- (3) in case of a foreign commission agent, to the extent of 1% of the free on board value of export goods for which the said service has been used.*

3.6.3 Abatements for specified services – Notification No. 1/2006 ST dated 01.03.06

Notification No. 1/2006 ST dated 01.03.06 provides for abatements from gross value in case of certain specified services. Service tax is payable at lower rate if the service provider does not avail CENVAT credit of duty/tax on inputs/input services and capital goods. Each such abatement has been discussed in Chapter 4 : Gamut and Coverage of Taxable Services under the relevant taxable service.

3.6.4 Exemption to services provided by a person located outside India in relation to booking of accommodation for a customer located outside India in a hotel in India – Notification No. 14/2008 ST dated 01.03.2008

The taxable services provided by a person, having his place of business, fixed establishment, permanent address or usual place of residence, in a country other than India, and which is received by a hotel located in India, in relation to booking of an accommodation in the said hotel, for a customer, who has his place of business, fixed establishment, permanent address or usual place of residence, in a country other than India are exempt from whole of the service tax leviable thereon.

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Hotel has been defined to mean a place that provides boarding and lodging facilities to public on commercial basis.

3.7 IMPORT OF SERVICES

Internationally, services provided by a foreign supplier to a domestic customer are subjected to VAT/GST under reverse charge or tax shift mechanism. Under the reverse charge method, a legal fiction is created treating as if the recipient had himself provided the services domestically and accordingly, the recipient of services is treated as deemed service provider.

Charging of service tax in the hands of the recipient of service, where the taxable service is provided from outside the country, is required to prevent distortion of competition.

Section 66A provides a separate mechanism for levying service tax on services received from outside India. Section 66A is to be read with the Taxation of Services (Provided from outside India and Received in India) Rules, 2006. It may be noted that only services received in India are taxable under these provisions. Section 66A provides that:

- (1) Where any service specified in clause (105) of section 65 is,—
 - (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and
 - (b) received by a person (recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India,
such service shall be a taxable service. Such service shall be treated as if the recipient had himself provided the service in India. Accordingly all the provisions of Chapter V of the Finance Act, 1994 shall apply to such services.
- (2) However, a service received by an individual for a purpose other than for use in any business or commerce shall not be a taxable service.
- (3) If the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.
- (4) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section. In other words, permanent establishment in India and the permanent establishment outside India shall be treated as two separate legal persons for taxation purposes.

- (5) A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.
- (6) In relation to a body corporate, the place where it is incorporated or otherwise legally constituted shall be its usual place of residence.

3.8 TAXATION OF SERVICES (PROVIDED FROM OUTSIDE INDIA AND RECEIVED IN INDIA) RULES, 2006

Notification No.11/2006-ST 19.04.2006 has notified the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. These rules have come into force from 19.04.2006.

Rule 2 – Definitions

“Input”, “input service” and “output service” shall have the meaning assigned to them in clause (k), (l) and (p) of rule 2 of the CENVAT Credit Rules, 2004. [Refer Chapter 4 of Part A of this Study Material]

As per clause (e) of rule 2, “India” includes the *installations, structures and vessels in the continental shelf and exclusive economic zone of India.*

The words and expressions used in these rules and not defined, but defined in the Finance Act 1994 shall have the meanings respectively assigned to them in the Act.

Rule 3 - Taxable services provided from outside India and received in India

Rule 3 classifies taxable services provided from outside India and received in India in to three categories. However, this classification shall be subject to section 66A of the Finance Act, 1994. The three categories are:

- (a) when the immovable property in respect of which the service is provided or to be provided is situated in India [Rule 3(i)]
- (b) when the service is performed in India [Rule 3(ii)]
- (c) when service is received by a recipient located in India for use in relation to business or commerce [Rule 3(iii)]
- (a) As per Rule 3(i) the following services provided or to be provided from outside India in relation to immovable property situated in India shall be taxable services and thus, chargeable to service tax:

Sub-clause of section 65(105)	Service covered
(d)	General insurance services
(p)	Architects' services
(q)	Interior decorator's services

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(v)	Real estate agent's services
(zzq)	Commercial or industrial construction services
(zzza)	Site preparation and clearance, excavation, earth moving and demolition services
(zzzb)	Dredging services of rivers, ports, harbours, backwaters and estuaries
(zzzc)	Survey and map making services other than by Government departments
(zzzh)	Construction services in respect of residential complexes
(zzzr)	Auctioneer' services, other than auction of property under directions or orders of a court of law or auction by the Central Government
(zzzy)	Mining services
(zzzz)	Services of renting of immovable property
(zzzza)	Services involved in the execution of a works contract

- (b) As per rule 3(ii) the following services shall be taxable service and charged to service tax, only if they are performed in India:

Sub-clause of section 65(105)	Service Covered
(a)	Stock broking
(f)	Courier agency's services
(h)	Custom house agent's services
(i)	Steamer agent's services
(j)	Clearing and forwarding agent's services
(l)	Air travel agent's services
(m)	Mandap keeper's services
(n)	Tour operator's services
(o)	Rent-a-cab scheme operator's services
(s)	Practising chartered accountant's services
(t)	Practising cost accountant's services
(u)	Practising company secretary's services
(w)	Security agency's services
(x)	Credit rating agency's services

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(y)	Market research agency's services
(z)	Underwriter's services
(zb)	Photography services
(zc)	Convention services
(zi)	Video tape production services
(zj)	Sound recording services
(zn)	Port services
(zo)	Authorised service station's services
(zq)	Beauty parlour's services
(zr)	Cargo handling services
(zt)	Dry cleaning services
(zu)	Event management services
(zv)	Fashion designer's services
(zw)	Health club and fitness centre's services
(zza)	Storage and warehousing services
(zzc)	Commercial training or coaching services
(zzd)	Erection, commissioning or installation services
(zzf)	Internet café's services
(zzg)	Management, maintenance or repair services
(zzh)	Technical testing and analysis services
(zzi)	Technical inspection and certification services
(ztl)	Other port services
(zzm)	Airport services
(zzn)	Transport of goods by air services
(zzo)	Business exhibition services
(zzp)	Transport of goods by road
(zts)	Opinion poll services
(zzt)	Outdoor caterer's services
(zzv)	Survey and exploration of mineral services
(zzw)	Pandal or shamiana contractor's services
(zzx)	Travel agent services
(zzy)	Forward contract services
(zzzd)	Cleaning services other than in relation to agriculture, horticulture, animal husbandry or

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	dairying
(zzze)	Services in respect of Membership of clubs or associations
(zzzf)	Packaging services
(zzzp)	Transport of goods in containers by rail by any person, other than Government railway
(zzzzg)	<i>Stock exchange services in relation to securities</i>
(zzzzh)	<i>Commodity exchange services</i>
(zzzzi)	<i>Processing and clearing house services</i>

It has been clarified that even if any of such taxable service is partly performed in India, it shall be considered to have been performed in India. The value of such taxable service shall be determined under section 67 of the Act and the rules made thereunder.

Further, where the following taxable services:-

- (i) Management, maintenance or repair service - sub-clause (zzg)
- (ii) Technical testing and analysis agency's service - sub-clause (zzh) and
- (iii) Technical inspection and certification service - sub-clause (zzi)

are provided in relation to any goods or material or any immovable property, as the case may be, situated in India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed in India, shall be treated as the taxable service performed in India.

(c) Rule 3(iii) covers the following services:

Sub-clause of section 65(105)	Service Covered
(b)	Telephone services
(c)	Pager services
(d)	General insurance services (other than immovable property)
(e)	Advertising agency's services
(g)	Consulting engineer's services
(k)	Manpower recruitment agency's services
(r)	Management consultant's services
(za)	Scientific and technical consultancy services
(zd)	Leased circuit services

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(ze)	Telegraph services
(zf)	Telex services
(zg)	Facsimile (FAX) services
(zh)	On-line information and data base access or retrieval services
(zk)	Broadcasting services
(zl)	Insurance auxiliary (General Insurance) services
(zm)	Banking and financial services
(zs)	Cable operator's services
(zx)	Life insurance services
(zy)	Insurance auxiliary (Life insurance) services
(zz)	Rail travel agent's services
(zzb)	Business auxiliary services
(zze)	Franchise services
(zzj)	Authorised service station's services in respect of light motor vehicle
(zzk)	Foreign exchange broking services
(zzr)	Intellectual property services
(zzu)	Programme production (of TV or radio programmes) services
(zzz)	Transport of goods through pipeline or other conduit
(zzzc)	Survey and map making services other than by government departments (other than immovable property)
(zzzg)	Mailing list compilation and mailing services
(zzzi)	Registrar to an issue's services
(zzzj)	Share transfer agent's services
(zzzk)	Automated teller machine operations, maintenance or management services
(zzzl)	Recovery agent's services
(zzzm)	Sale of space or time for advertisement, other than in print media
(zzzn)	Sponsorship services provided to any body corporate or firm, other than sponsorship of sports events

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(zzzq)	Business support services
(zzzr)	Auctioneer' services, other than auction of property under directions or orders of a court of law or auction by the Central Government (other than immovable property)
(zzzs)	Public relations services
(zzzt)	Ship management services
(zzzu)	Internet <i>telecommunication</i> services
(zzzw)	Credit card, debit card, charge card or other payment card related services
(zzzx)	Telecommunication services
(zzzb)	Development and supply of content services
(zzzc)	Asset management including portfolio management and all forms of fund management services
(zzzd)	Design services
(zzze)	<i>Information technology software services</i>
(zzzf)	<i>Investment management services provided under ULIP</i>

The abovementioned services shall be taxable services and subject to service tax, when they are received by a recipient located in India for use in relation to business or commerce.

In respect of all the services covered in the above-mentioned three categories, it shall be deemed that the recipient of the service has himself provided the service in India. Therefore, he shall pay the service tax.

Points to be noted: Following must be noted:

- (i) Services in relation to transport of passengers embarking on international journey by air, other than economy class passengers and transport of persons by cruise ship are not covered in any of the three categories.
- (ii) *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.*

Rule 4 - Registration and payment of service tax

The recipient of taxable services provided from outside India and received in India shall make an application for registration. All the provisions for registration contained in

section 69 of the Finance Act, 1994 and rule 4 of Service Tax Rules, 1994 shall apply in this case.

Rule 5 - Taxable services not to be treated as output services

The treatment of the recipient of service, as the deemed service provider under section 66A is only for the purpose of charging service tax on taxable services received from outside the country. The taxable services provided from outside India and received in India, therefore, shall not be treated as output services for the purpose of availing credit of duty of excise paid on any input or service tax paid on any input services under CENVAT Credit Rules, 2004. However, where such service is used as an input service for providing any taxable output service or final products, the service tax paid on such service can be taken as input credit.

3.9 EXPORT OF SERVICES

Service tax is a destination-based consumption tax and it is not applicable on export of services. Export of Service Rules, 2005 provide a scientific criteria to decide what is 'export of service'. The rules make it clear that exemption from service tax/rebate of service tax and excise duty paid is admissible only if there is 'export of service' as defined in these rules.

3.10 EXPORT OF SERVICE RULES, 2005

RULE 2 - DEFINITIONS

1. "Act" means the Finance Act, 1994 [Rule 2(a)].
2. "input" shall have the meaning assigned to it in clause (k) of rule 2 of the CENVAT Credit Rules, 2004 [Rule 2(b)]. (refer Chapter 4 of Part A of this Study Material)
3. "input service" shall have the meaning assigned to it in clause (l) of rule 2 of the CENVAT Credit Rules, 2004 [Rule 2(c)]. (refer Chapter 4 of Part A of this Study Material)

RULE 3 - EXPORT OF TAXABLE SERVICE

Rule 3 classifies the taxable services in three categories –

- (a) when the immovable property in respect of which the service is rendered is situated abroad [Rule 3(1)(i)]
- (b) when the service is performed outside India [Rule 3(1)(ii)]
- (c) when service is provided from India, but recipient of service is outside India [Rule 3(1)(iii)].

In order to be treated as export of services, different requirements in each of the three categories have to be fulfilled.

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- (a) As per Rule 3(1)(i) the following services provided in relation to an immovable property shall be eligible for exemption as 'export of service' only when the immovable property is situated outside India:

Sub-clause of section 65(105)	Service covered
(d)	General insurance services
(p)	Architects' services
(q)	Interior decorator's services
(v)	Real estate agent's services
(zzq)	Commercial or industrial construction services
(zzza)	Site preparation and clearance, excavation, earth moving and demolition services
(zzzb)	Dredging services of rivers, ports, harbours, backwaters and estuaries
(zzzc)	Survey and map making services other than by Government departments
(zzzh)	Construction services in respect of residential complexes
(zzzr)	Auctioneer' services, other than auction of property under directions or orders of a court of law or auction by the Central Government
(zzzy)	Mining services
(zzzz)	Services of renting of immovable property
(zzzza)	Services involved in the execution of a works contract

Thus, in the first category, the service shall be treated as 'export of taxable service' only if the immovable property is situated abroad.

- (b) As per Rule 3(1)(ii) the following services shall be eligible for exemption as 'export of services' only if they are performed outside India:

Sub-clause of section 65(105)	Service Covered
(a)	Stock broking

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(f)	Courier agency's services
(h)	Custom house agent's services
(i)	Steamer agent's services
(j)	Clearing and forwarding agent's services
(l)	Air travel agent's services
(m)	Mandap keeper's services
(n)	Tour operator's services
(o)	Rent-a-cab scheme operator's services
(s)	Practising chartered accountant's services
(t)	Practising cost accountant's services
(u)	Practising company secretary's services
(w)	Security agency's services
(x)	Credit rating agency's services
(y)	Market research agency's services
(z)	Underwriter's services
(zb)	Photography services
(zc)	Convention services
(zi)	Video tape production services
(zj)	Sound recording services
(zn)	Port services
(zo)	Authorised service station's services
(zq)	Beauty parlour's services
(zr)	Cargo handling services
(zt)	Dry cleaning services
(zu)	Event management services
(zv)	Fashion designer's services
(zw)	Health club and fitness centre's services
(zza)	Storage and warehousing services
(zzc)	Commercial training or coaching services
(zzd)	Erection, commissioning or installation services
(zzf)	Internet café's services
(zzg)	Management, maintenance or repair services
(zzh)	Technical testing and analysis services
(zzi)	Technical inspection and certification services
(zzl)	Other port services
(zzm)	Airport services

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(zzn)	Transport of goods by air services
(zzo)	Business exhibition services
(zzp)	Transport of goods by road
(zsz)	Opinion poll services
(zzt)	Outdoor caterer's services
(zzv)	Survey and exploration of mineral services
(zzw)	Pandal or shamiana contractor's services
(zzx)	Travel agent services
(zzy)	Forward contract services
(zzzd)	Cleaning services other than in relation to agriculture, horticulture, animal husbandry or dairying
(zzze)	Services in respect of membership of clubs or associations
(zzzf)	Packaging services
(zzzp)	Transport of goods in containers by rail by any person, other than Government railway
(zzzzg)	<i>Stock exchange services in relation to securities</i>
(zzzzh)	<i>Commodity exchange services</i>
(zzzzi)	<i>Processing and clearing house services</i>

It has been clarified that even if any of such taxable service is partly performed outside India, it shall be considered to have been performed outside India.

Further, where the following taxable services:-

- (i) Management, maintenance or repair service - sub-clause (zzg)
- (ii) Technical testing and analysis agency's service - sub-clause (zzh) and
- (iii) Technical inspection and certification service - sub-clause (zzi)

are provided in relation to any goods or material or any immovable property, as the case may be, situated outside India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed outside India, shall be treated as the taxable service performed outside India.

(c) Rule 3(1)(iii) covers the following services:

Sub-clause of section	Service Covered
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- (b) Telephone services
- (c) Pager services
- (d) General insurance services (other than immovable property)
- (e) Advertising agency's services
- (g) Consulting engineer's services
- (k) Manpower recruitment agency's services
- (r) Management consultant's services
- (za) Scientific and technical consultancy services
- (zd) Leased circuit services
- (ze) Telegraph services
- (zf) Telex services
- (zg) Facsimile (FAX) services
- (zh) On-line information and data base access or retrieval services
- (zk) Broadcasting services
- (zl) Insurance auxiliary (General Insurance) services
- (zm) Banking and financial services
- (zs) Cable operator's services
- (zx) Life insurance services
- (zy) Insurance auxiliary (Life insurance) services
- (zz) Rail travel agent's services
- (zzb) Business auxiliary services
- (zze) Franchise services
- (zzj) Authorised service station's services in respect of light motor vehicle
- (zzk) Foreign exchange broking services
- (zzr) Intellectual property services
- (zzu) Programme production (of TV or radio programmes) services
- (zzz) Transport of goods through pipeline or other conduit
- (zzzc) Survey and map making services other than by government departments (other than immovable property)
- (zzzg) Mailing list compilation and mailing services
- (zzzi) Registrar to an issue's services

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(zzzj)	Share transfer agent's services
(zzzk)	Automated teller machine operations, maintenance or management services
(zzzl)	Recovery agent's services
(zzzm)	Sale of space or time for advertisement, other than in print media
(zzzn)	Sponsorship services provided to any body corporate or firm, other than sponsorship of sports events
(zzzq)	Business support services
(zzzr)	Auctioneer' services, other than auction of property under directions or orders of a court of law or auction by the Central Government (other than immovable property)
(zzzs)	Public relations services
(zzzt)	Ship management services
(zzzu)	Internet <i>telecommunication</i> services
(zzzw)	Credit card, debit card, charge card or other payment card related services
(zzzx)	Telecommunication services
(zzzzb)	Development and supply of content services
(zzzzc)	Asset management including portfolio management and all forms of fund management services
(zzzzd)	Design services
(zzzze)	<i>Information technology software services</i>
(zzzzf)	<i>Investment management services provided under ULIP</i>

The abovementioned services when provided in relation to business or commerce shall be eligible for exemption as 'export of services' when the recipient of such services are located outside India. When provided otherwise such services shall be eligible for exemption as 'export of services' when the recipient of such services are located outside India at the time of provision of such service.

However, where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishment or office located outside India.

Points to be noted: Following must be noted:

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- (i) Services in relation to transport of passengers embarking on international journey by air, other than economy class passengers and transport of persons by cruise ship are not covered in any of the three categories.
- (ii) *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.*

Certain conditions to be fulfilled for export of service: As per sub-rule (2) of rule 3, any taxable service specified in sub-rule (1) shall be treated as exported only when the following conditions are satisfied:–

- (a) such service is provided from India and used outside India; and
- (b) payment for such service provided outside India is received by the service provider in convertible foreign exchange.

Term 'used outside India' to be understood in the context of the characteristics of a particular category of service as mentioned in rule 3(1): Circular No. 111/5/2009 ST dated 24.02.2009 has explained that it is an accepted legal principle that the law has to be read harmoniously so as to avoid contradictions within legislation. Thus, the term 'used outside India' shall be understood in the context of the characteristics of a particular category of service as mentioned in rule 3(1). The following examples will make it clear:

- (i) *Used outside India for a Category I - [Rule 3(1)(i)]: For example, under architect service (a Category I service [Rule 3(1)(i)]), even if an Indian architect prepares a design sitting in India for a property located in U.K. and hands it over to the owner of such property having his business and residence in India, it would have to be presumed that service has been used outside India.*
- (ii) *Used outside India for a Category II - [Rule 3(1)(ii)]: Similarly, if an Indian event manager (a Category II service [Rule 3(1)(ii)]) arranges a seminar for an Indian company in U.K. the service has to be treated to have been used outside India because the place of performance is U.K. even though the benefit of such a seminar may flow back to the employees serving the company in India .*
- (iii) *Used outside India for a Category III- [Rule 3(1)(iii)]: For the services that fall under Category III [Rule 3(1)(iii)], **the relevant factor is the location of the service receiver and not the place of performance.** In this context, the phrase 'used outside India ' is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for Category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the **benefits of these services accrue outside India.***

3.32 Service tax & VAT

The following are some of the activities where the benefit of export of services will be extended to Category III as what is accruing outside India is the benefit in terms of promotion of business of a foreign company:

- (i) Call centres engaged by foreign companies who attend to calls from customers or prospective customers from all around the world including from India;*
- (ii) Medical transcription where the case history of a patient as dictated by the doctor abroad is typed out in India and forwarded back to him;*
- (iii) Indian agents who undertake marketing in India of goods of a foreign seller. In this case, the agent undertakes all activities within India and receives commission for his services from foreign seller in convertible foreign exchange;*
- (iv) Foreign financial institution desiring transfer of remittances to India, engaging an Indian organisation to dispatch such remittances to the receiver in India. For this, the foreign financial institution pays commission to the Indian organisation in foreign exchange for the entire activity being undertaken in India.*

Similar would be the treatment for other Category III [Rule 3(1)(iii)] services as well.

Services provided in the continental shelf and exclusive economic zone of India are 'service provided in India': It has been clarified by an Explanation in rule 3 that "India" includes *the installations, structures and vessels* in the continental shelf and exclusive economic zone of India. The 'exclusive economic zone' extends up to 200 nautical miles inside the sea from baseline. 'India' also includes territorial waters, i.e., up to 12 nautical miles from landmass. Thus, service tax is leviable if services are provided within territorial waters or in *the installations, structures and vessels* in the continental shelf and exclusive economic zone. In other words, services provided in this area/zone will be treated as 'service provided in India'.

RULE 4 - EXPORT WITHOUT PAYMENT OF SERVICE TAX

Any service, which is taxable under clause (105) of section 65 of the Act, may be exported without payment of service tax.

RULE 5 - REBATE OF SERVICE TAX

Where any taxable service is exported, the Central Government can grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service. Such rebate will be granted by issuing a notification. The rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.

1. Rebate of service tax paid on exported taxable services

Notification No.11/2005 ST, dated 19.04.2005 has been issued by the Central Government under Rule 5 of the Export of Services Rules, 2005 (hereinafter referred to as said rules). Such notification grants rebate of the whole of the service tax and cess paid on all taxable services exported in terms of rule 3 to any country other than Nepal and Bhutan, subject to certain conditions, limitations and procedures.

Conditions and limitations

- (a) the taxable service should have been exported in terms of rule 3 of the said rules and payment for export of such taxable service should be received in India in convertible foreign exchange;
- (b) the service tax and cess, rebate of which has been claimed, should have been paid on the taxable service exported;
- (c) the amount of rebate of service tax and cess admissible should not be less than Rs.500; and
- (d) in case,-
 - (i) the service tax and cess, rebate of which has been claimed, have not been paid; or
 - (ii) the taxable service, rebate on which has been claimed, has not been exported, the rebate paid, if any, shall be recovered with interest as per the provisions of section 73 and section 75 of the Finance Act, 1994 as if no service tax and cess have been paid on such taxable service.

Procedure:-

- (i) claim of rebate of service tax and cess paid on all taxable services exported shall be filed with the jurisdictional Assistant/Deputy Commissioner of Central Excise;
- (ii) such application shall be accompanied by,—
 - a. documentary evidence of receipt of payment against taxable service exported and for which rebate is claimed, payment of service tax and cess on such taxable service exported;
 - b. a declaration that such taxable service, rebate of service tax and cess paid on which is claimed, has been exported, in terms of rule 3 of the said rules, along with the documents evidencing the export of such taxable service;
- (iii) The jurisdictional Assistant/Deputy Commissioner of Central Excise, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

Here, "Cess" means education cess *and secondary and higher education cess* levied on taxable services.

3.34 Service tax & VAT

2. Rebate of excise duty/service tax paid on inputs/input service used in providing exported taxable services

Notification No.12/2005 ST, dated 19.04.2005 has been issued by the Central Government under Rule 5 of the Export of Services Rules, 2005 (hereinafter referred to as said rules). Such notification grants rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all taxable input services (hereinafter referred to as 'input services'), used in providing taxable services exported in terms of rule 3 to any country other than Nepal and Bhutan, subject to certain conditions, limitations and procedures.

Conditions and limitations

- (a) the taxable service should have been exported in terms of rule 3 of the said rules and payment for export of such taxable service has been received in India in convertible foreign exchange;
- (b) the duty, rebate of which has been claimed, should have been paid on the inputs;
- (c) the service tax and cess, rebate of which has been claimed, should have been paid on the input services;
- (d) the total amount of rebate of duty, service tax and cess admissible should not be less than Rs.500;
- (e) no CENVAT credit should have been availed on inputs and input services on which rebate has been claimed; and
- (f) in case,-
 - (i) the duty or, as the case may be, service tax and cess, rebate of which has been claimed, have not been paid; or
 - (ii) the taxable service, rebate for which has been claimed, has not been exported; or
 - (iii) CENVAT credit has been availed on inputs and input services on which rebate has been claimed,

the rebate paid, if any, shall be recoverable with interest as per the provisions of section 73 and section 75 of the Finance Act, 1994 as if no service tax and cess have been paid on such taxable service.

Procedure:-

1. **Filing of declaration-** The provider of taxable service to be exported shall, prior to date of export of taxable service, file a declaration with the jurisdictional Assistant/Deputy Commissioner of Central Excise describing the taxable service intended to be exported with,-

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- (a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing taxable service to be exported;
- (b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing taxable service to be exported.

2. Verification of declaration- The Assistant/Deputy Commissioner of Central Excise shall verify the correctness of the declaration filed prior to such export of taxable service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant/Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration.

3. Procurement of input materials and receipt of input services- The provider of taxable service shall,-

- (i) obtain the inputs required for use in providing taxable service to be exported, directly from a registered factory or from a dealer registered for the purposes of the CENVAT Credit Rules, 2004 accompanied by invoices issued under the Central Excise Rules, 2002;
- (ii) receive the input services required for use in providing taxable service to be exported and an invoice, a bill or, as the case may be, a challan issued under the provisions of Service Tax Rules, 1994.

4. Presentation of claim for rebate

- (a) (i) claim of rebate of the duty paid on the inputs or the service tax and cess paid on input services shall be filed with the jurisdictional Assistant/Deputy Commissioner of Central Excise after the taxable service has been exported;
- (ii) such application shall be accompanied by, –
 - a. invoices for inputs issued under Central Excise Rules, 2002 and invoice, a bill, or as the case may be, a challan for input services issued under Service Tax Rules, 1994 in respect of which rebate is claimed;
 - b. documentary evidence of receipt of payment against taxable service exported, payment of duty on inputs and service tax and cess on input services used for providing taxable service exported, rebate of which is claimed;
 - c. a declaration that such taxable service, has been exported in terms of rule 3 of the said rules, along with documents evidencing such export.
- (b) The jurisdictional Assistant/Deputy Commissioner of Central Excise having regard to the declaration, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

3.36 Service tax & VAT

Here, “Cess” means education cess *and secondary and higher education cess* levied on taxable services. “Duty” means, duties of excise leviable under the following enactments, namely:-

- (a) the Central Excise Act, 1944;
- (b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;
- (d) National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 as amended from time to time;
- (e) special excise duty collected under a Finance Act;
- (f) additional duty of excise as levied under section 157 of the Finance Act, 2003;
- (g) education cess on excisable goods; and
- (h) the additional duty of excise leviable under section 85 of the Finance Act, 2005.

Self-examination questions

1. What is the value based exemption available to the service providers?
2. What are the conditions for availment of the value based exemption from service tax?
3. Is the value based service tax exemption compulsory?
4. What are the circumstances when the value based exemption is not available?
5. A service provider raised a bill for the taxable services rendered by him on 15.11.2009. However, he receives the payment for the services only in December 2009. When would the liability to pay service tax arise?
6. Explain whether service tax is payable on advance received towards the value of the taxable services.
7. Is there any tax liability for the services received in India, which are provided by a person from outside India? Discuss.
8. Who is liable to pay service tax for the services provided from outside India?
9. What are the benefits available for export of services?
10. What is the procedure for claiming the rebate of service tax paid on exported taxable services?