

GAMUT AND COVERAGE OF TAXABLE SERVICES

This chapter elucidates the specific provisions governing the services covered in the gamut of service tax.

4.1 STOCK BROKING SERVICES

Effective date: 1st July 1994.

Definitions:

“Stock-broker” means a person, who has either made an application for registration or is registered as a stock-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 [Section 65(101)].

“Securities” has the meaning assigned to it in clause (h) of section 2 of the Securities contracts (Regulation) Act, 1956 [Section 65(93)].

“Securities” include —

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
 - (ia) derivative;
 - (ib) Units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- (ii) Government securities;
 - (iia) such other instruments as may be declared by the central Government to be Securities; and
- (iii) rights or interest in securities.

[Section 2(h) of The Securities contracts (Regulation) Act, 1956]

Scope of taxable service shall include any service provided or to be provided to any person, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange [Section 65(105)(a)].

4.2 Service tax & VAT

4.2 GENERAL INSURANCE SERVICES

Effective date: 1st July 1994.

Definitions:

“General insurance business” has the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalization) Act, 1972 [Section 65(49)].

“General insurance business” means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them but does not include capital redemption business and annuity certain business. [Section 3(g) of General Insurance Business (Nationalization) Act, 1972]

“Policy holder” has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938 [Section 65(80)].

“Policy Holder” includes a person to whom the whole of the interest of the policy holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition. [Section 2(2) of the Insurance Act, 1938].

“Insurer” means any person carrying on the general insurance business and includes a re-insurer [Section 65(58)].

Scope of taxable service shall include any service provided or to be provided to a policyholder or any person, by an insurer, including re-insurer carrying on general insurance business in relation to general insurance business [Section 65(105)(d)].

It is to be noted that service tax is payable only on the total amount of the premium charged by an insurer carrying on general insurance business - fire, marine and miscellaneous insurance.

Exemptions:

- (i) The taxable service provided by an insurer, carrying on general insurance business, to a policyholder in relation to General Insurance Business provided under the Universal Health Insurance Scheme is exempt from the service tax leviable thereon [Notification No. 16/2003 ST dated 11.07.2003].
- (ii) The taxable service provided by an insurer, carrying on general insurance business, to a policy holder for the insurance of sheep is exempt from the whole of service tax leviable thereon. However, the exemption contained in this notification shall be valid only upto 31.12.2009 [Notification No. 31/2006 ST dated 11.12.2006].

4.3 ADVERTISING AGENCY SERVICES

Effective date: 1st November 1996.

Definitions:

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

Gamut And Coverage of Taxable Services 4.3

“Advertising agency” means any *person* engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant [Section 65(3)].

Scope of taxable service shall include any service provided or to be provided to any person, by an advertising agency in relation to advertisement, in any manner [Section 65(105)(e)].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

Advertising agency [Section (105)(e)]	23.08.07	Persons / agencies canvass advertisements for publishing, on commission basis. Such persons / agencies do not provide any other services like making, preparation, display or exhibition of advertisement. Whether merely canvassing advertisement for publishing on a commission basis by persons / agencies is classifiable as Advertising Agency service [section 65(105)(e)] or not?	Merely canvassing advertisements for publishing, on commission basis, is not classifiable under the taxable service falling under section 65(105)(e). Such services are liable to service tax under business auxiliary service [section 65(105)(zzb)].
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4.4 COURIER SERVICES

Effective date: 1st November 1996.

Definition:

“Courier agency” means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles [Section 65(33)].

Scope of taxable service shall include any service provided or to be provided to any person, by a courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles [Section 65(105)(f)].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

(i) Courier agency [Section (105)(f)]	23.08.07	Some transporters undertake door- to-door transportation of goods or articles and they have made special arrangements for speedy	The nature of service provided by 'Express Cargo Service' provider falls within the scope and definition of the courier agency. Hence, the said
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4.4 Service tax & VAT

		transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely delivery. Whether such 'Express cargo service' is covered under courier agency service [section 65(105)(f)]?	service is liable to service tax under courier agency service [section 65(105)(f)].
(ii) Courier agency [Section (105)(f)]	23.08.07	"Angadia" undertakes delivery of documents, goods or articles received from a customer to another person for a consideration. Whether services provided by angadia is liable to service tax under courier agency service [section 65(105)(f)]?	Angadias are covered within the definition of 'courier agency' [section 65(33)]. Therefore, such services provided by angadia is liable to service tax under courier agency service [section 65(105)(f)].
(iii) Miscellaneous	23.08.07	Department of Posts provides a number of services. What is the status of those services for the purpose of levy of service tax?	(i) Following services provided by Department of Posts are not liable to service tax. Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations. Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services. (ii) In addition to the services mentioned in (i) above, Department of Posts also provides a number of services such as courier services (Speed Post), insurance

Gamut And Coverage of Taxable Services 4.5

			services (Postal Life Insurance), agency or intermediary services on commission basis (distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills), which are also provided by other commercial organizations. Such services are liable to service tax under appropriate taxable services.
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4.5 CONSULTING ENGINEER'S SERVICES

Effective date: 7th July 1997

Definition:

“Consulting engineer” means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering [Section 65(31)].

Scope of taxable service shall include any service provided or to be provided to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering.

It has been clarified that services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under consulting engineer's service [Section 65(105)(g)].

Exemptions:

- (i) The taxable services provided by a consulting engineer to *any person* on transfer of technology is exempt 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 [Notification No. 18/2002 dated 16.12.2002].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

Consulting engineer [Section	23.08.07	Whether a self-employed professionally qualified engineer can be considered as	Consulting engineers include self-employed professionally qualified engineer, whether or
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4.6 Service tax & VAT

(105)(g)]		'consulting engineer' [section 65(31)] and service provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)]?	not employing others for assistance. Services provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)].
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4.6 CUSTOM HOUSE AGENT'S SERVICES

Effective date: 15th June 1997.

Definition:

"Custom house agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962 [Section 65(35)].

Scope of taxable service shall include any service provided or to be provided to any person, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods [Section 65(105)(h)].

4.7 STEAMER AGENT'S SERVICES

Effective date: 15th June 1997

Definitions:

"Shipping line" means any person who owns or charters a ship and includes an enterprise which operates or manages the business of shipping [Section 65(97)].

"Steamer agent" means any person who undertakes, either directly or indirectly,—

- (a) to perform any service in connection with the ship's husbandry or dispatch including the rendering of administrative work related thereto; or
- (b) to book, advertise or canvass for cargo for or on behalf of a shipping line; or
- (c) to provide container feeder services for or on behalf of a shipping line [Section 65(100)].

"Ship" means a sea-going vessel and includes a sailing vessel [Section 65(96)].

Scope of taxable service shall include any service provided or to be provided to a shipping line, by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services [Section 65(105)(i)].

4.8 CLEARING & FORWARDING AGENT'S SERVICES

Effective date: 16th July 1997

Definition:

“Clearing and forwarding agent” means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent [Section 65(25)].

Scope of taxable service shall include any service provided or to be provided to any person, by a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner [Section 65(105)(j)].

A clearing and forwarding agent's scope of services is quite wide. Normally, there is a contract between the principal and the clearing and forwarding agent detailing the terms and conditions and also indicating the commission or remuneration to which the C&F agent is entitled. In a typical situation, clearing & forwarding agents are appointed in outstation location by manufacturers or wholesale distributors so that they may clear the goods, store them and then forward the goods according to the instructions of the principal owner. Thus, the person concerned is an agent and an agent is an authorised representative of a named principal owner.

4.9 MANPOWER RECRUITMENT AGENT'S SERVICES

Effective date: 7th July 1997

Definition:

“Manpower recruitment or supply agency” means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise to any other person [Section 65(68)].

Scope of taxable service shall include any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise in any manner.

Here, recruitment or supply of manpower service includes the services in relation to:

- (a) pre-recruitment screening,
- (b) verification of the credentials and antecedents of the candidate, and
- (c) authenticity of documents submitted by the candidate [Section 65(105)(k)].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

(i) Manpower recruitment agent [Section	23.08.07	Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses / MNCs, who	'Manpower recruitment or supply agency' is defined as "any person engaged in providing any service, directly
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4.8 Service tax & VAT

(105)(k)]		come to the institutes for recruiting candidates through campus interviews. Whether services provided by such institutions in relation to recruitment of manpower are liable to service tax under 'manpower recruitment or supply agency' service [section 65(105)(k)]?	or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client" [section 65(68)]. Educational institutes such as IITs and IIMs fall within the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment under section 65(105)(k).
(ii) Manpower recruitment agent [Section (105)(k)]	23.08.07	Business or industrial organisations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Whether service tax is liable on such services under manpower recruitment or supply agency's service [section 65(105)(k)]	In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual. Such cases are covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.

4.10 AIR TRAVEL AGENT'S SERVICES

Effective date: 1st July 1997

Definition:

“Air travel agent” means any person engaged in providing any service connected with the booking of passage for travel by air [Section 65(4)].

Scope of taxable service shall include any service provided or to be provided to any person, by an air travel agent in relation to the booking of passage for travel by air [Section 65(105)(l)].

Exemptions:

- (i) The portion of the value of taxable service which is in excess of the commission received by the air travel agent from the airline for booking of passage for travel by air is exempt from service tax [Notification No. 22/97 ST dated 26.06.1997].

4.11 MANDAP KEEPER'S SERVICES

Effective date: 1st July 1997

Definitions:

“Mandap” means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organising any official, social or business function. Here, social function includes marriage [Section 65(66)].

“Immovable property” does not include standing timber, growing crops or grass — (Section 3 of the Transfer of Property Act, 1882).

“Mandap keeper” means a person who allows temporary occupation of a mandap for consideration for organising any official, social or business function. Here, social function includes marriage [Section 65(67)].

“Caterer” means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion [Section 65(24)].

Scope of taxable service shall include any service provided or to be provided to any person, by a mandap keeper in relation to the use of a mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer [Section 65(105)(m)].

Exemptions:

- (i) The taxable services provided to any person by a mandap keeper for the use of the precincts of a religious place as a mandap are exempt from service tax leviable thereon. Here, religious place means a place which is meant for conduct of prayers or worship pertaining to a religion [Notification No. 14/2003 ST dated 20.06.2003].

4.10 Service tax & VAT

(ii) In case of services provided by a hotel as mandap keeper, where services provided include catering services (i.e. supply of food alongwith any service in relation to use of a mandap), an abatement of 40% of the gross amount charged is granted if the bill issued for this purpose indicates that it is inclusive of charges for catering services. Accordingly, in such cases, service tax is payable on 60% of the gross amount charged for the above services. However, the exemption is not available in cases where:

- (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of Cenvat Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003*.

Here, 'food' means a substantial and satisfying meal. 'Hotel' means a place that provides boarding and lodging facilities to public on commercial basis [*Notification No. 1/2006 ST dated 01.03.2006*].

(iii) An abatement of 40% of the gross amount charged is granted in case of services in relation to use of mandap, including the facilities provided to *any person* in relation to such use and also for the catering charges. Accordingly, in such cases, service tax is payable on 60% of the gross amount charged for the above services. This exemption shall apply only in such cases where the mandap keeper also provides catering services, that is, supply of food and the invoice, bill or challan issued indicates that it is inclusive of the charges for catering service. However, the exemption is not available in cases where:

- (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of Cenvat Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003*.

Here, 'food' means a substantial and satisfying meal [*Notification No. 1/2006 ST dated 01.03.2006*].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

(i) Mandap keeper [Section (105)(m)]	23.08.07	"Mandap" is defined as any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor	Halls, rooms etc. let out by hotels / restaurants for a consideration for organising social, official or business functions are covered within the scope of "mandap"
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Gamut And Coverage of Taxable Services 4.11

		coverings therein let out for a consideration for organizing any official, social or business function. [section 65(66)] “Mandap keeper” is defined as a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function [section 65(67)]. Whether hotels / restaurants letting out their halls, rooms etc. for social, official or business functions fall within the definition of “mandap” and allowing temporary occupation of halls, rooms etc by such hotels / restaurants for organizing any official, social or business function is liable to service tax under “mandap keeper service” [section 65(105)(m)]?	[section 65(66)], and such hotels and restaurants are covered within the scope of “mandap keeper” [section 65(67)]. Accordingly, service tax is leviable on services provided by hotels and restaurants in relation to letting out of halls, rooms, etc. for organizing any official, social or business function under mandap keeper service [section 65(105)(m)].
(ii) Mandap keeper [Section (105)(m)]	23.08.07	Whether allowing temporary occupation of a hall for the purpose of holding dance, drama or music programme or competitions is liable to service tax under Mandap Keeper Service?	Dance, drama or music programme or competitions are social functions and allowing temporary occupation of a hall for a consideration for organizing such functions are liable to service tax under Mandap Keeper Service [section 65(105)(m)].

4.12 TOUR OPERATOR’S SERVICES

Effective date: 1st September 1997

Definitions:

“**Tour operator**” means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by

4.12 Service tax & VAT

whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or the rules made thereunder.

Here, “tour” does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field [Section 65(115)].

“**Tour**” means a journey from one place to another irrespective of the distance between such places [Section 65(113)].

“**Tourist vehicle**” has the meaning assigned to it in clause (43) of section 2 of the Motor Vehicles Act, 1988 [Section 65(114)].

“Tourist vehicle” means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf [Section 2(43) of The Motor Vehicles Act, 1988].

Scope of taxable service shall include any service provided or to be provided to any person, by a tour operator in relation to a tour [Section 65(105)(n)].

Exemptions:

- (i) In case of services provided in relation to a tour by a tour operator where the tour operator provides a package tour, an abatement of 75% of the gross amount charged is granted if the bill issued for this purpose indicates that it is inclusive of charges for such a tour. Accordingly, in such cases, service tax is payable on 25% of the gross amount charged for the above services. However, the exemption is not available in cases where:
 - (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of Cenvat Credit Rules, 2004; or
 - (ii) the service provider has availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003*.

Here, ‘package tour’ means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour [Notification No. 1/2006 ST dated 01.03.2006].

- (ii) In case of services provided in relation to a tour by a tour operator where the services provided are other than in relation to a package tour, an abatement of 60% of the gross amount charged is granted if the bill issued for this purpose indicates that the amount charged in the bill is the gross amount charged for such a tour. Accordingly, in such cases, service tax is payable on 40% of the gross amount charged for the above services. However, the exemption is not available in cases where:
 - (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit

Gamut And Coverage of Taxable Services 4.13

of service tax on input services, used for providing such taxable service, has been taken under the provisions of Cenvat Credit Rules, 2004; or

- (ii) the service provider has availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003*.

Here, 'package tour' means a tour in which the provisions for transportation and accommodation for stay of the person undertaking the tour has been afforded by the tour operator [*Notification No. 1/2006 ST dated 01.03.2006*].

- (iii) In cases where the services provided by a tour operator are solely of arranging or booking accommodation for any person in relation to a tour, an abatement of 90% of the gross amount charged is granted if invoice, bill or challan issued for this purpose indicates that it is towards charges for such accommodation. This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator to the client only includes the service charges for arranging or booking accommodation for any person in relation to a tour and does not include the cost of such accommodation. However, the exemption is not available in cases where:
 - (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of Cenvat Credit Rules, 2004; or
 - (ii) the service provider has availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003* [*Notification No. 1/2006 ST dated 01.03.2006*].
- (iv) *Taxable services provided or to be provided to any person by a tour operator, having a contract carriage permit for inter-state or intra-state transportation of passengers, excluding tourism, conducted tours, charter or hire service, are exempted from whole of the service tax leviable thereon* [*Notification No. 20/2009 ST dated 07.07.2009*].

4.13 RENT-A-CAB SCHEME OPERATOR'S SERVICES

Effective date: 16th July 1997

Definitions:

"Rent-a-cab scheme operator" means any person engaged in the business of renting of cabs [Section 65(91)].

"Cab" means-

- (i) a motorcab, or
- (ii) maxicab, or
- (iii) any motor vehicle constructed or adapted to carry more than 12 passengers excluding the driver, for hire or reward.

However, the maxicab referred to in sub-clause (ii) or motor vehicle referred to in sub-clause (iii) which is rented for use by an educational body imparting skill or knowledge or lessons on

4.14 Service tax & VAT

any subject or field, other than a commercial training or coaching centre, shall not be included within the meaning of cab [Section 65(20)].

“Maxi cab” has the meaning assigned to it in clause (22) of section 2 of the Motor Vehicles Act, 1988 [Section 65(70)].

“Maxi cab” means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward [Section 2(22) of The Motor Vehicles Act, 1988].

“Motor cab” has the meaning assigned to it in clause (25) of section 2 of the Motor Vehicles Act, 1988 [Section 65(71)].

“Motor cab” means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward [Section 2(25) of The Motor Vehicles Act, 1988].

Scope of taxable service shall include any service provided or to be provided to any person, by a rent-a-cab scheme operator in relation to the renting of a cab [Section 65(105)(o)].

Exemptions:

- (i) In case of services provided by a rent-a-cab scheme operator in relation to renting of cabs, an abatement of 60% of the gross amount charged is granted. Thus service tax is payable on 40% of the total amount charged in the above case. However, the exemption is not available in cases where:
 - (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of Cenvat Credit Rules, 2004; or
 - (ii) the service provider has availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003* [Notification No. 1/2006 ST dated 01.03.2006].

4.14 ARCHITECT'S SERVICES

Effective date: 16th October 1998.

Definition:

“Architect” means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture [Section 65(6)].

Scope of taxable service shall include any service provided or to be provided to any person, by an architect in his professional capacity, in any manner [Section 65(105)(p)].

4.15 INTERIOR DECORATOR'S SERVICES

Effective date: 16th October 1998

Definition:

"Interior decorator" means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of spaces, whether man-made or otherwise and includes a landscape designer [Section 65(59)].

Scope of taxable service shall include any service provided or to be provided to any person, by an interior decorator in relation to planning, design or beautification of spaces, whether man-made or otherwise, in any manner [Section 65(105)(q)].

Clarifications:

It has been clarified vide a clarification issued by *D.G.S.T. in October, 2003* that Vaastu/FengShui Consultants come under the category of Interior Decorators as they offer services by way of advice relating to planning and designing of spaces.

4.16 MANAGEMENT OR BUSINESS CONSULTANT'S SERVICES

Effective date: 16th October 1998.

Definition:

"Management consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management [Section 65(65)].

Scope of taxable service shall include any service provided or to be provided to any person, by a management or business consultant in connection with the management of any organisation, in any manner [Section 65(105)(r)].

4.17 PRACTISING CHARTERED ACCOUNTANT'S SERVICES

Effective date: 16th October 1998.

Definition:

"Practising Chartered accountant" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy [Section 65(83)].

Scope of taxable service shall include any service provided or to be provided to any person, by a practising chartered accountant in his professional capacity, in any manner [Section 65(105)(s)].

4.16 Service tax & VAT

Exemptions:

- (i) The taxable services provided or to be provided by a practising chartered accountant in his professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, is exempt from the whole of service tax leviable thereon [Notification No. 25/2006 ST dated 13.07.2006].

4.18 PRACTISING COST ACCOUNTANT'S SERVICES

Effective date: 16th October 1998

Definition:

"Practising Cost accountant" means a person who is a member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and Works Accountants Act, 1959 and includes any concern engaged in rendering services in the field of cost accountancy [Section 65(84)].

Scope of taxable service shall include any service provided or to be provided to any person, by a practising cost accountant in his professional capacity, in any manner [Section 65(105)(t)].

Exemptions:

- (i) The taxable services provided or to be provided by a practising cost accountant in his professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, is exempt from the whole of service tax leviable thereon [Notification No. 25/2006 ST dated 13.07.2006].

4.19 PRACTISING COMPANY SECRETARY'S SERVICES

Effective date: 16th October 1998.

Definition:

"Practising Company Secretary" means a person who is a member of the Institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of company secretaryship [Section 65(85)].

Scope of taxable service shall include any service provided or to be provided to any person, by a practising company secretary in his professional capacity, in any manner [Section 65(105)(u)].

Exemptions:

- (i) The taxable services provided or to be provided by a practising company secretary in his professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force,

by way of issue of notice, is exempt from the whole of service tax leviable thereon [Notification No. 25/2006 ST dated 13.07.2006].

4.20 REAL ESTATE AGENT'S SERVICES

Effective date: 16th October 1998.

Definitions:

“Real estate agent” means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting of real estate and includes a real estate consultant [Section 65(88)].

“Real estate consultant” means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate [Section 65(89)].

Scope of taxable service shall include any service provided or to be provided to any person, by a real estate agent in relation to real estate [Section 65(105)(v)].

4.21 SECURITY AGENCY'S SERVICES

Effective date: 16th October 1998.

Definition:

“Security agency” means any person engaged in the business of rendering services relating to the security of any property, whether moveable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel [Section 65(94)].

Scope of taxable service shall include any service provided or to be provided to any person, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity [Section 65(105)(w)].

4.22 CREDIT RATING AGENCY'S SERVICES

Effective date: 16th October 1998.

Definition:

“Credit rating agency” means any person engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and includes credit rating of any financial obligation, instrument or security, which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal [Section 65(34)].

4.18 Service tax & VAT

Scope of taxable service shall include any service provided or to be provided to any person, by a credit rating agency in relation to credit rating of any financial obligation, instrument or security [Section 65(105)(x)].

4.23 MARKET RESEARCH AGENCY'S SERVICES

Effective date: 16th October 1998.

Definition:

"Market research agency" means any person engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customised and syndicated research services [Section 65(69)].

Scope of taxable service shall include any service provided or to be provided to any person by a market research agency in relation to market research of any product, service or utility, in any manner [Section 65(105)(y)].

4.24 UNDERWRITER'S SERVICES

Effective date: 16th October 1998.

Definitions:

"Underwriter" has the meaning assigned to it in clause (f) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993 [Section 65(116)].

"Underwriter" means a person who engages in the business of underwriting of an issue of securities of a body corporate. [Rule 2(f) of the Securities and Exchange Board of India (Underwriters) Rules, 1993].

"Underwriting" has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993 [Section 65(117)].

"Underwriting" means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them [Rule 2(g) of The Securities and Exchange Board of India (Underwriters) Rules, 1993].

"Body corporate" shall have the meaning assigned to it in clause (7) of section 2 of the companies Act, 1956 [Section 65(14)].

"Body corporate" or **"corporation"** includes a company incorporated outside India but does not include —

- (a) a corporation sole;
- (b) a co-operative society registered under any law relating to co-operative societies; and
- (c) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf [Section 2(7) of the companies Act, 1956].

“Securities” has the meaning assigned to it in clause (h) of section 2 of the Securities contracts (Regulation) Act, 1956 [Section 65(93)].

- (i) “Securities” include —
- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
 - (ia) derivative;
 - (ib) Units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- (ii) Government securities;
- (iia) such other instruments as may be declared by the Central Government to be Securities; and
- (iii) rights or interest in securities [Section 2(h) of the Securities contracts (Regulation) Act, 1956].

Scope of taxable service shall include any service provided or to be provided to any person, by an underwriter in relation to underwriting, in any manner [Section 65(105)(z)].

4.25 SCIENTIFIC OR TECHNICAL CONSULTANCY SERVICES

Effective date: 16th July 2001.

Definition:

“Scientific or Technical Consultancy” means any advice, consultancy or scientific or technical assistance rendered in any manner, either directly or indirectly, by a scientist or a technocrat or any science or technology institution or organisation, to any person, in one or more disciplines of science or technology [Section 65(92)].

Scope of taxable service shall include any service provided or to be provided to any person, by a scientist or a technocrat, or any science or technology institution or organisation, in relation to scientific or technical consultancy [Section 65(105)(za)].

4.26 PHOTOGRAPHY SERVICES

Effective date: 16th July 2001.

Definitions:

“Photography” includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography [Section 65(78)].

“Photography studio or agency” means any professional photographer or any person engaged in the business of rendering service relating to photography [Section 65(79)].

Scope of taxable service shall include any service provided or to be provided to any person, by a photography studio or agency in relation to photography in any manner [Section 65(105)(zb)].

4.20 Service tax & VAT

4.27 CONVENTION SERVICES

Effective date: 16th July 2001.

Definition:

“**Convention**” means a formal meeting or assembly which is not open to the general public, and does not include a meeting or assembly the principal purpose of which is to provide any type of amusement, entertainment or recreation [Section 65(32)].

Scope of taxable service shall include any service provided or to be provided to any person, by any person in relation to holding of convention in any manner [Section 65(105)(zc)].

Exemptions:

- (i) In case of services provided in relation to holding of a convention where services provided include catering services, an abatement of 40% of the gross amount charged is granted if the gross amount charged from the *recipient of service* is inclusive of the charges for the catering services. Thus service tax will be leviable on 60% of the total amount billed. However, the exemption is not available in cases where:
 - (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of CENVAT Credit Rules, 2004; or
 - (ii) the service provider has availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003*.

Here, "catering service" means supply of substantial and satisfying meal [Notification No. 1/2006 ST dated 01.03.2006].

4.28 ON-LINE INFORMATION AND DATABASE ACCESS AND/OR RETRIEVAL SERVICES

Effective date: 16th July 2001.

Definitions:

“**Data**” has the meaning assigned to it in clause (o) of sub-section (1) of section 2 of the Information Technology Act, 2000 [Section 65(36)].

“Data” means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer [Section 2(1)(o) of the Information Technology Act, 2000]

“**On-line information and database access or retrieval**” means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network [Section 65(75)].

“Electronic form” has the meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 [Section 65(39)].

“Electronic form” with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro fiche or similar device [Section 2(1)(r) of the Information Technology Act, 2000].

“Information” has the meaning assigned to it in clause (v) of sub-section (1) of section 2 of the Information Technology Act, 2000 [Section 65(53)].

“Information” includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche [Section 2(1)(v) of the Information Technology Act, 2000].

“Computer Network” has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Information Technology Act, 2000 [Section 65(30)].

“Computer network” means the interconnection of one or more computers through –

- (i) the use of satellite, microwave, terrestrial line or other communication media; and
- (ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained

[Section 2(1)(j) of the Information Technology Act, 2000]

Scope of taxable service shall include any service provided or to be provided to any person, by any person, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner [Section 65(105)(zh)].

In the context of this service, it may be relevant to point out the manner in which on-line information and database access/retrieval is generally made available. First, the Internet Service Providers (ISPs) provide telecommunication network or gateways necessary to access messages and databases and other information holdings of content providers. The second element is on-line information provision services which includes database services, provision of information on web-sites, provision of on-line data retrieval services from data bases and other information, to all or limited number of users and provision of on-line information by content providers.

Internet service providers (ISPs) provide access to the web-sites through the computer network and the web-sites. Web-sites, in turn, provide the database or information. Some of the well-known ISPs operating in India are VSNL, MTNL, Satyam online, Bharti, Tata, RPG, HCL, Wipro, BPL, Dishnet etc. They normally charge the customers on the basis of usage of time (hours). They also provide dedicated lease lines on lump-sum payment basis. Clearly ISPs provide service in relation to on-line information and database access or retrieval. They are an integral part of the internet operations and without their service, the data or information can neither be accessed nor retrieved. They are, therefore, liable to pay service tax on the amount charged from the customers whether on usage time basis or on lease line basis.

4.22 Service tax & VAT

4.29 VIDEO TAPE PRODUCTION SERVICES

Effective date: 16th July 2001.

Definitions:

“Video production agency” means any professional videographer or any commercial concern engaged in the business of rendering services relating to video-tape production [Section 65(119)].

“Video-tape production” means the process of any recording of any programme, event or function on a magnetic tape or on any other media or device and includes services relating thereto such as editing, cutting, colouring, dubbing, title printing, imparting special effects, processing, adding, modifying or deleting sound, transferring from one media or device to another, or undertaking any video post-production activity, in any manner [Section 65(120)].

Scope of taxable service shall include any service provided or to be provided to any person, by a video production agency in relation to videotape production, in any manner [Section 65(105)(zi)].

4.30 SOUND RECORDING SERVICES

Effective date: 16th July 2001.

Definitions:

“Sound recording” means recording of sound on any media or device including magnetic storage device, and includes services relating to recording of sound in any manner such as sound cataloguing, storing of sound and sound mixing or re-mixing or any audio post-production activity [Section 65(98)].

“Sound recording studio or agency” means any person engaged in the business of rendering any service relating to sound recording [Section 65(99)].

“Magnetic storage device” includes wax blanks, discs or blanks, strips or films for the purpose of original sound recording [Section 65(63)].

Scope of taxable service shall include any service provided or to be provided to any person, by a sound recording studio or agency in relation to any kind of sound recording [Section 65(105)(zj)].

4.31 BROADCASTING (RADIO AND TELEVISION) SERVICES

Effective date: 16th July 2001.

Definitions:

“Broadcasting” has the meaning assigned to it in clause (c) of section 2 of the Prasar Bharati (Broadcasting corporation of India) Act, 1990. It also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is

intended for public listening or viewing, as the case may be.

In the case of a broadcasting agency or organisation, having its head office situated in any place outside India, the term includes the activity of selling time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator including multisystem operator or any other person on behalf of the said agency or organisation, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner [Section 65(15)].

“Broadcasting” means the dissemination of any form of communication like signs, signals, writing, pictures, images, and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly [Section 2(c) of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990].

Broadcasting agency or organisation – It means any agency or organisation engaged in providing service in relation to broadcasting in any manner. In the case of a broadcasting agency or organisation having its head office situated in any place outside India, it includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency or organization [Section 65(16)].

Scope of taxable service shall include any service provided or to be provided to a client, by a broadcasting agency or organisation in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, include service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency or organisation.

4.24 Service tax & VAT

Explanation – For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable service in relation to broadcasting, even if the encryption of signals or beaming thereof through the satellite through the satellite might have taken place outside India [Section 65(105)(zk)].

This service covers both radio broadcasting and television broadcasting. While radio broadcasting is done by the All India Radio (AIR) or any private radio channel, television broadcasting is done by Doordarshan, Indian TV Channels and Foreign TV channels. The broadcasting may be of advertisements, serials/programmes or live events. The client is the person who wants an advertisement to be broadcasted or the sponsor of a serial or programme or event who wants the serial or programme or event to be broadcasted. The service provider i.e., broadcasting agency or organisation is the AIR, Doordarshan, other Indian TV Channels and foreign TV channels who broadcast the programme in India.

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

Broadcasting agency or organization [Section (105)(zk)]	23.08.07	Whether Prasar Bharati Corporation (Doordarshan and All India Radio) are liable to pay service tax under Broadcasting Service [section 65(105) (zk)]?	Prior to 1.3.2003, Prasar Bharati Corporation did not pay service tax by virtue of erstwhile section 22 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990. However, the said section 22 was omitted vide section 163 of the Finance Act, 2002 with effect from 1.4.2003. In view of the above statutory changes, with effect from 1.4.2003 Prasar Bharati Corporation is liable to pay service tax for the broadcasting services provided like any other broadcasting agency or organization engaged in providing service in relation to broadcasting.
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4.32 INSURANCE AUXILIARY SERVICES

Effective date: 16th July 2001 (in relation to general insurance business)

Effective date: 16th August 2002 (in relation to life insurance business)

Definitions:

“Actuary” has the meaning assigned to it in clause (1) of section 2 of the Insurance Act, 1938 [Section 65(1)].

“Actuary” means an actuary possessing such qualifications as may be prescribed [Section 2(1) of the Insurance Act, 1938].

“Insurance agent” has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938 [Section 65(54)].

“Insurance agent” means an insurance agent licensed under section 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including, business relating to the continuance, renewal or revival of policies of insurance [Section 2(10) of the Insurance Act, 1938].

“Insurance auxiliary service” means any service provided by an actuary, an intermediary or insurance intermediary or an insurance agent in relation to general insurance business or life insurance business and includes risk assessment, claim settlement, survey and loss assessment [Section 65(55)].

“Intermediary or insurance intermediary” has the meaning assigned to it in sub-clause (f) of clause (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999 [Section 65(56)].

“Intermediary or insurance intermediary” includes insurance brokers, reinsurance brokers, insurance consultants, surveyors and loss assessors [Section 2(1)(f) of the Insurance Regulatory and Development Authority Act, 1999].

“Policy holder” has the meaning assigned to it in clause (2) of section 2 of the Insurance act, 1938 [Section 65(80)].

“Policy Holder” includes a person to whom the whole of the interest of the policy holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition. [Section 2(2) of the Insurance Act, 1938].

Scope of taxable service shall include any service provided or to be provided to a policyholder or any person or insurer, including re-insurer, by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning general insurance business [Section 65(105)(zi)].

It shall also include any service provided or to be provided to a policyholder or any person or insurer, including re-insurer, by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning life insurance business [Section 65(105)(zy)].

4.26 Service tax & VAT

In the case of an insurance agent, it has been provided by Rule 2(1)(d)(iii) that the person liable to pay service tax will be the concerned insurance company who has appointed the agent.

4.33 BANKING AND OTHER FINANCIAL SERVICES

Effective date: 16th July 2001

Definitions:

“Banking” and **“Banking company”** shall have the meanings assigned to them in clauses (b) and (c) of section 5 of the Banking Regulation Act, 1949, respectively [Section 65(10) and section 65(11)].

“Banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise [Section 5(b) of the Banking Regulation Act, 1949].

“Banking company” means any company which transacts the business of banking in India.

Explanation - Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause. - Section 5 (c) of the Banking Regulation Act, 1949

“Financial Institution” has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 [Section 65(45)].

“Financial institution” means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:

- (i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;
- (ii) the acquisition of shares, stock, bonds, debentures or securities issued by a government or local authority or other marketable securities of a like nature;
- (iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972;
- (iv) the carrying on of any class of insurance business;
- (v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;
- (vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person,

but does not include any institution, which carries on as its principal business, –

- (a) agricultural operations; or
 - aa) industrial activity; or
- (b) the purchase or sale of any goods (other than securities) or the providing of any services; or
- (c) the purchase, construction or sale of immovable property, so, however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

Explanation- For the purposes of this clause, “industrial activity” means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964 [Section 45-I(c) of the Reserve Bank of India Act, 1934].

“Non-Banking Financial company” has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 [Section 65(74)].

“Non-banking financial company” means-

- (i) a financial institution which is a company;
- (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;
- (iii) such other non-banking institution or class of such institutions, as the bank may, with the previous approval of the central Government and by notification in the Official Gazette, specify [Section 45-I(f) of the Reserve Bank of India Act, 1934].

“Banking and other financial services” means—

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

- (i) financial leasing services including equipment leasing and hire-purchase;

Here, “financial leasing” means a lease transaction where-

- (i) contract for lease is entered into between two parties for leasing of a specific asset;
 - (ii) such contract is for use and occupation of the asset by the lessee;
 - (iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and
 - (iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment.

- (ii) merchant banking services;

4.28 Service tax & VAT

- (iii) securities and foreign exchange (forex) broking and purchase or sale of foreign currency, including money changing;
 - (iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;
 - (v) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
 - (vi) provision and transfer of information and data processing; and
 - (vii) banker to an issue; and
 - (viii) other financial services, namely, lending; issue of pay order, demand draft, cheque, letter of credit and bill of exchange; transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, over draft facility, bill discounting facility, safe deposit locker, safe vaults; operation of bank accounts
- (b) foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer, other than those covered under sub-clause (a).

Here, "purchase or sale of foreign currency, including money changing" includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately [Section 65(12)].

"Banker to an issue" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934, carrying on the activities relating to an issue including acceptance of application, application money, allotment money and call money, refund of application money, payment of dividend and interest warrants [Section 65(9c)].

"Foreign exchange broker" includes any authorised dealer of foreign exchange [Section 65(46)].

"Authorised dealer of foreign exchange" has the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 [Section 65(8)].

"Authorised person" means an authorized dealer, money changer, off-shore banking unit or any other person for the time being authorized under sub-section (1) of section 10 to deal in foreign exchange or foreign securities [Section 2(c) of the Foreign Exchange Management Act, 1999].

Scope of taxable service shall include any service provided or to be provided to any person, by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern in relation to banking and other financial services [Section 65(105)(zm)].

It shall also include service provided or to be provided to any person, by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorised money changer, other than a banking company or a financial institution including a non-banking financial

company or any other body corporate or commercial concern referred to above [Section 65(105)(zzk)].

Exemptions:

- (i) Banking company or financial institutions are exempt from service tax for the service provided to Government of India or a State Government for collection of any duties or taxes [Notification No. 13/2004 ST dated 10.09.2004].
- (ii) The value of taxable service provided to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person, in relation to,-
 - (a) overdraft facility;
 - (b) cash credit facility; or
 - (c) discounting of bills, bills of exchange or cheques,

which is equivalent to the amount of interest on such overdraft, cash credit or, as the case may be, discount is exempt from the service tax subject to the condition that the said interest amount is shown separately in an invoice, a bill or, as the case may be, a challan issued for this purpose [Notification No. 29/2004 ST dated 22.09.2004].

- (iii) Exemption from service tax is provided to financial leasing services including equipment leasing and hire-purchase from so much of the service tax as is equivalent to the service tax calculated on 90% of an amount, forming or representing interest. In other words service tax shall be payable only on 10% of the interest. The interest is the difference between the installment paid towards repayment of the lease amount and the principal amount contained in such installment.

This exemption does not apply to any amount, other than an amount forming or representing as interest, charged by the service provider such as lease management fee, processing fee, documentation charges and administration fee [Notification No. 4/2006 ST dated 01.03.2006].

- (iv) *In case of services provided in relation to chit, an abatement of 30% of the gross amount charged is granted. Thus, service tax will be leviable on 70% of the total amount billed. However, the exemption is not available in cases where:*
 - (i) *the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of CENVAT Credit Rules, 2004; or*
 - (ii) *the service provider has availed the benefit under the Notification No. 12/2003 ST, dated 20.06.2003.*

Here, "chit" means a transaction whether called chit, chit fund, chitty, kuri, or by any other

4.30 Service tax & VAT

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. [Notification No. 1/2006 ST dated 01.03.2006].

- (v) *Taxable services of the nature referred to in sub-clause (zm) or (zzk), as the case may be, of clause (105) of section 65 of the Finance Act, provided to a Scheduled bank, by any other Scheduled bank, in relation to inter-bank transactions of purchase and sale of foreign currency are exempt from the whole of the service tax leviable thereon [Notification no 19/2009 ST dated 07.07.2009].*

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

(i) Banking and other financial services [Section (105)(zm)]	23.08.07	'Asset management and all other forms of fund management' are liable to service tax under 'banking and other financial service' [section 65(12)]. Whether the amount charged as 'entry and exit load' from the investor by a mutual fund is liable to service tax as asset / fund management services under banking and other financial services [section 65(105)(zm)]?	Entry load and exit load charged by a mutual fund are not for the purpose of management of assets. Thus, amount charged as "entry and exit load" are not to be treated as consideration received by an Asset Management Company for asset management and hence not liable to service tax under Banking and other Financial service [section 65(105)(zm)].
(ii) Banking and other financial services [Section (105)(zm)]	23.08.07	Whether depository services and Electronic Access to Securities Information (EASI) services provided by Central Depository Services (India) Ltd., (CDSL) is liable to service tax under Banking and other Financial Services [section 65(105)(zm)]?	Definition of "Banking and other Financial Services" specifically includes "provision and transfer of information and data processing [section 65(12)(a)(vii)]". Services provided by CDSL falls within the scope of "provision and transfer of information and data processing". These services are not in the nature of "on-line information and data base access or retrieval

Gamut And Coverage of Taxable Services 4.31

			services". Therefore, the depository services provided by CDSL including Electronic Access to Securities Information (EASI) for a fee are liable to service tax under Banking and other Financial Services. [section 65(105)(zm)]
(iii) Banking and other financial services [Section (105)(zm)]	23.08.07	Services provided by banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern in relation to asset management including portfolio management, and all forms of fund management, is leviable to service tax under "banking and other financial services" [section 65(105)(zm) and section 65(12)]. The said taxable service also includes cash management services provided. Services are provided in relation to chit funds. Chit Funds are of two types, namely:- (a) <u>Simple Chit Funds</u>: In this case, members agree to contribute to the fund a certain amount at regular interval. Lots are drawn periodically and the member, whose name appears, gets the periodical collection. No separate amount is charged from the members. (b) <u>Business Chit Funds</u>: In this case, there is a promoter	Reserve Bank of India has clarified that the business of a chit fund is to mobilize cash from the subscribers and effectively cause movement of such cash to keep it working and, therefore, the activity of chit funds is in the nature of cash management. (a) In the case of Simple Chit Funds, no consideration is paid or received for the services provided and, therefore, the question of levy of service tax does not arise. (b) In the case of Business Chit Funds, cash management service is provided for a consideration and, therefore, leviable to service tax under "banking and other financial services".

4.32 Service tax & VAT

		known as foreman who draws up the terms and conditions of the scheme and enrolls subscribers. Every subscriber has to pay his subscription in regular installments. The foreman charges a separate amount for the services provided. Some States prescribe a ceiling limit for the amount to be charged by such promoter for the services provided. Commission amount is retained by the promoter as consideration for providing the services in relation to chit fund. Whether services provided in relation to chit fund is leviable to service tax under "banking and other financial services" or not?	
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4.34 PORT SERVICES BY MAJOR PORTS AND OTHER PORTS

Effective date: 16th July 2001.

Definitions:

"Port" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963 [Section 65(81)].

"Port" means any major port to which this Act applies within such limits as may, from time to time, be defined by the central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the central Government under the provisions of the Indian Ports Act [Section 2(q) of the Major Port Trusts Act, 1963].

"Port service" means any service rendered by a port or other port or any person authorised by such port or other port, in any manner, in relation to a vessel or goods [Section 65(82)].

"Other port" has the meaning assigned to "port" in clause (4) of section 3 of the Indian Ports Act, 1908, but does not include the port defined in clause (81) [Section 65(76)].

"Port" includes also any part of a river or channel in which this Act is for the time being in force [Section 3(4) of the Indian Ports Act, 1908].

"Vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts

Gamut And Coverage of Taxable Services 4.33

Act, 1963 [Section 65(118)].

“Vessel” includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson [Section 2(z) of the Major Port Trusts Act, 1963].

“**Goods**” has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930 [Section 65(50)].

“Goods” are defined as every kind of movable property other than actionable claims and money, and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale [Section 2(7) of Sale of Goods Act, 1930].

Scope of taxable service shall include any service provided or to be provided to any person, by a port or any person authorised by the port, in relation to port services, in any manner [Section 65(105)(zn)].

It shall also include any service to any person, by other port or any person authorized by that port in relation to port services in any manner [Section 65(105)(ztl)].

It is to be noted that vessel related and cargo related services are liable to service tax. Services in relation to passengers are excluded.

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

Port [Section (105)(zn)]	23.08.07	Management Committee of Paradeep Port was constituted as per the directions of Supreme Court of India. The Committee operates under the “Paradeep Port, Clearing, Forwarding and Handling Workers (Regulation of Employment) Scheme, 1994”. Officers of the Paradeep Port Trust are associated with the Committee. The Committee is authorized by the Port Trust to provide a number of services within the port area for a consideration. Whether services provided by the Management Committee within the port area for a consideration is liable to service tax under Port Service?	As the Management Committee of Paradeep Port is authorized by the Port Trust to provide services within the port area at the prescribed rates, such services provided by the Committee are liable to service tax under Port Service. [section 65(105) (zn)]
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4.34 Service tax & VAT

4.35 AUTHORISED SERVICE STATIONS'S SERVICES

Effective date: 16th July 2001.

Definitions:

"Authorised service station" means any service station, or centre, authorised by any motor vehicle manufacturer, to carry out any service, reconditioning or restoration or repair of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer [Section 65(9)].

"Motor car" has the meaning assigned to it in clause (26) of section 2 of the Motor Vehicles Act, 1988 [Section 65(72)].

"Motor car" means any motor vehicle other than a transport vehicle, omnibus, road roller, tractor, motorcycle or invalid carriage [Section 2(26) of the Motor Vehicles Act, 1988].

"Motor vehicle" has the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 [Section 65(73)].

"Motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty five cubic centimeters [Section 2(28) of the Motor Vehicles Act, 1988].

"Light Motor Vehicle" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver [Section 65(62)].

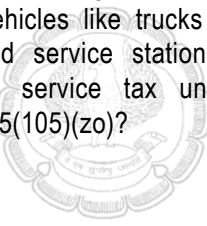
Scope of taxable service shall include any service provided or to be provided *to any person*, by an authorised service station, in relation to any service or repair, reconditioning or restoration of motorcars, light motor vehicles or two wheeled motor vehicles, in any manner [Section 65(105)(zo)].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

(i) Authorized service station [Section (105)(zo)]	23.08.07	Authorized dealers of motor vehicles provide to customers free servicing of motor vehicles without charging any amount as service charge from the customers. The vehicle manufacturer promises such a facility to attract customers and reimburses the service charges to the authorised	In this case, service is provided by an authorised service station to a customer and the service provider receives the consideration for the services provided from the manufacturer. Service tax is liable on the amount received from the vehicle manufacturer for the
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Gamut And Coverage of Taxable Services 4.35

		dealers, who provide to customers free servicing of motor vehicles. However, as per agreement, consideration for the service provider is not directly paid by the customer but by the vehicle manufacturer. Whether such 'free services' given to the customer free of cost by the authorized dealers (for which they are reimbursed by the vehicle manufacturers) are liable to service tax under authorised service station service [section 65(105)(zo)]?	purpose of servicing of vehicles.
(ii) Authorized service station [Section (105)(zo)]	23.08.07	Whether servicing / repair of heavy vehicles like trucks by authorized service station is liable to service tax under section 65(105)(zo)? 	Service tax is liable on services provided by an authorised service station to a customer in relation to service, repair, reconditioning or restoration of motorcars, light motor vehicles or two-wheeled motor vehicles [section 65(105)(zo)]. Thus, servicing of heavy vehicles like trucks, not being one of the specified categories of motor vehicles, is at present not covered within the scope of the said taxable service.
(iii) Authorized service station [Section (105)(zo)]	23.08.07	Whether spare parts sold by a service station during the servicing of vehicles is liable to payment of service tax? Whether exemption can be claimed on the cost of consumables that get consumed during the course of providing service?	Service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sales tax / VAT. Whether a given transaction between the service station and the customer is a sale or not, is to be determined taking into account the real nature and material facts of the

4.36 Service tax & VAT

			transaction. Payment of VAT / sales tax on a transaction indicates that the said transaction is treated as sale of goods. Any goods used in the course of providing service are to be treated as inputs used for providing the service and accordingly, cost of such inputs form integral part of the value of the taxable service. Where spare parts are used by a service station for servicing of vehicles, service tax should be levied on the entire bill, including the value of the spare parts, raised by the service provider, namely, service stations. However, the service provider is entitled to take input credit of excise duty paid on such parts or any goods used in providing the service wherein value of such goods has been included in the bill. The service provider is also entitled to take input credit of service tax paid on any taxable services used as input services for servicing of vehicles.
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4.36 BEAUTY PARLOUR'S SERVICES

Effective date: 16th August 2002.

Definitions:

“Beauty treatment” includes hair cutting, hair dyeing, hair dressing, face and beauty treatment, cosmetic treatment, manicure, pedicure or counselling services on beauty, face care or make-up or such other similar services [Section 65(17)].

“Beauty parlour” means any establishment providing beauty treatment services [Section 65(18)].

Gamut And Coverage of Taxable Services 4.37

Scope of taxable service shall include any service provided or to be provided to any person, by a beauty parlour in relation to beauty treatment [Section 65(105)(zq)].

4.37 CARGO HANDLING SERVICES

Effective date: 16th August 2002.

Definition:

“Cargo handling service” means loading, unloading, packing or unpacking of cargo and includes,—

- (a) cargo handling services provided for freight in special containers or for non containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and
- (b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking,

but does not include, handling of export cargo or passenger baggage or mere transportation of goods [Section 65(23)].

Scope of taxable service shall include any service provided or to be provided to any person, by a cargo handling agency in relation to cargo handling services [Section 65(105)(zr)].

Exemptions:

- (i) Taxable service provided to any person by a cargo handling agency in relation to agricultural produce or goods intended to be stored in a cold storage is exempt from payment of service tax [Notification No. 10/2002 ST dated 1.08.2002].

4.38 CABLE OPERATOR’S SERVICES

Effective date: 16th August 2002.

Definitions:

“Cable operator” shall have the meaning assigned to it in section 2(a) of the cable Television Networks (Regulation) Act, 1995 [Section 65(21)].

“Cable operator” means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network [Section 2(aa) of the Cable Television Networks (Regulation) Act, 1995]

“Cable service” shall have the meaning assigned to it in section 2(b) of the cable Television Networks (Regulation) Act, 1995 [Section 65(22)].

“Cable service” means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals [Section 2(b) of the Cable Television Networks (Regulation) Act, 1995].

Scope of taxable service shall include any service provided or to be provided to any person, by a cable operator (including multi system operators) in relation to cable services [Section 65(105)(zs)].

4.38 Service tax & VAT

4.39 DRY CLEANING SERVICES

Effective date: 16th August 2002.

Definitions:

"Dry cleaning" includes dry cleaning of apparels, garments or other textile, fur or leather articles [Section 65(37)].

"Dry cleaner" means any person providing service in relation to dry cleaning [Section 65(38)].

Scope of taxable service shall include any service provided or to be provided to any person, by a dry cleaner in relation to dry cleaning [Section 65(105)(zt)].

4.40 EVENT MANAGEMENT SERVICES

Effective date: 16th August 2002.

Definitions:

"Event management" means any service provided in relation to planning, promotion, organising or presentation of any arts, entertainment, business, sports, marriage or any other event and includes any consultation provided in this regard [Section 65(40)].

"Event manager" means any person who is engaged in providing any service in relation to event management in any manner [Section 65(41)].

Scope of taxable service shall include any service provided or to be provided to any person, by an event manager in relation to event management [Section 65(105)(zu)].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

Event management [Section (105)(zu)]	23.08.07	Organizers of Trade Fairs and Exhibitions solicit participation from the trade and industry and provide space and other facilities, including furniture, cabins, security, electricity, etc., to display products and provision of services. Whether services provided by the organizers of trade fairs / exhibitions are covered within the scope of event management service [section 65(015)(zu)]?	Trade fairs and exhibitions are organised by persons. Such organisers of trade fairs and exhibitions provide services to exhibitors in relation to business exhibition. Services provided by an organizer of trade fairs and exhibitions to an exhibitor in relation to business exhibition is liable to service tax under "Business Exhibition Service" [Section 65(105)(zzo)] w.e.f. 10.09.2004. In addition, an organiser of the trade fair or business exhibition may engage an
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			event manager to provide service to the organiser in relation to organising trade fairs and exhibitions. In such cases, the event manager renders the service of "Event Management" to the organisers and is liable to pay service tax under "Event Management Service". The two services, namely "Business Exhibition Service" and "Event Management Service", and the two service providers of the respective services are distinct.
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4.41 FASHION DESIGNER'S SERVICES

Effective date: 16th August 2002.

Definitions:

"Fashion designing" includes any activity relating to conceptualising, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings and any other service incidental thereto [Section 65(43)].

"Fashion designer" means any person engaged in providing service in relation to fashion designing [Section 65(44)].

Scope of taxable service shall include any service provided or to be provided to any person, by a fashion designer in relation to fashion designing [Section 65(105)(zv)].

4.42 HEALTH CLUB AND FITNESS CENTRE SERVICES

Effective date: 16th August 2002.

Definitions:

"Health and Fitness service" means service for physical well-being such as sauna and steam bath, turkish bath, solarium, spas, reducing or slimming salons, gymnasium, yoga, meditation, massage (excluding therapeutic massage) or any other like service [Section 65(51)].

"Health Club and fitness centre" means any establishment, including a hotel or resort, providing health and fitness service [Section 65(52)].

Scope of taxable service shall include any service provided or to be provided to any person,

4.40 Service tax & VAT

by a health club and fitness centre in relation to health and fitness services [Section 65(105)(zw)].

4.43 LIFE INSURANCE SERVICES

Effective date: 10th September 2004

Definitions:

"Life insurance business" has the meaning assigned to it under section 2(11) of the Insurance Act, 1938 [Section 65(61)].

"Life insurance business" means the business of effecting contracts of insurance upon human life, including and contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include-

- (a) the granting of disability and double or triple indemnity accident benefit, if so provided in the contract of insurance,
- (b) the granting of annuities upon human life, and
- (c) the granting of superannuation allowances and annuity payable out of any fund applicable solely to the relief and maintenance of person engaged in any particular profession, trade or employment or of the dependent of such person. [Section 2(11) of the Insurance Act, 1938]

"Policy holder" has the meaning assigned to it in clause (2) of section 2 of the Insurance act, 1938 [Section 65(80)].

"Policy Holder" includes a person to whom the whole of the interest of the policy holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition. [Section 2(2) of the Insurance Act, 1938].

Scope of taxable service shall include any service provided or to be provided to any policyholder or any person, by an insurer, including re-insurer, carrying on life insurance business in relation to the risk cover in life insurance [Section 65(105)(zx)].

4.44 RAIL TRAVEL AGENT'S SERVICES

Effective date: 16th August 2002.

Definitions:

"Rail travel agent" means any person engaged in providing any service connected with booking of passage for travel by rail [Section 65(87)].

Scope of taxable service shall include any service provided or to be provided to any person, by a rail travel agent in relation to booking of passage for travel by rail [Section 65(105)(zz)].

4.45 STORAGE AND WAREHOUSING SERVICES

Effective date: 16th August 2002.

Definition

“Storage and Warehousing” includes storage and warehousing services for goods including liquids and gases but does not include any services provided for storage of agricultural products or any services provided by a cold storage [Section 65(102)].

Scope of taxable service shall include any service provided or to be provided to a person by a storage or warehouse keeper in relation to storage and warehousing of goods [Section 65(90)(zza)].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

Storage and warehousing [Section (105)(zza)]	23.08.07	Whether services provided in relation to handling / storage and warehousing of empty containers is liable to service tax under storage and warehousing service [section 65(105)(zza)]?	Empty containers are covered within the meaning of “goods” [section 65(50)]. Thus, services provided in relation to storage and warehousing of empty containers is liable to service tax under storage and warehousing service [section 65(105)(zza)].
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4.46 BUSINESS AUXILIARY SERVICES

Effective date 1st July 2003.

Definitions:

Business auxiliary service means any service in relation to,—

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client; or

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

- (iii) any customer care service provided on behalf of the client; or
- (iv) procurement of goods or services, which are inputs for the client; or

Explanation - For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, “inputs” means all goods or services intended for use by the client.

- (v) production or processing of goods for, or on behalf of, the client; or
- (vi) provision of service on behalf of the client; or
- (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi),

4.42 Service tax & VAT

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.

Explanation (a) - For the removal of doubts, it is hereby declared that for the purposes of this clause “commission agent” means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person—

- (i) deals with goods or services or documents of title to such goods or services; or
 - (ii) collects payment of sale price of such goods or services; or
 - (iii) guarantees for collection or payment for such goods or services; or
 - (iv) undertakes any activities relating to such sale or purchase of such goods or services [Section 65(19)].
- (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.

Scope of taxable service shall include any service provided or to be provided to a client, by any person in relation to business auxiliary service [Section 65(105)(zzb)].

Exemptions:

- (i) The business auxiliary services provided by commission agents in relation to sale or purchase of agricultural produce are exempt from service tax.

Agricultural produce means any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but makes it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food and processed tobacco [Notification No. 13/2003 ST dated 20.06.2003].

- (ii) The taxable service provided to a client by any person in relation to the business auxiliary service, in so far as it relates to:
 - (a) procurement of goods or services, which are inputs for the client;
 - (b) production or processing of goods for, or on behalf of, the client;
 - (c) provision of service on behalf of the client; or
 - (d) a service incidental or auxiliary to any activity specified in (a) to (c) above.

Gamut And Coverage of Taxable Services 4.43

and provided in relation to agriculture, printing, textile processing or education is exempt from the whole of the service tax leviable thereon [Notification No. 14/2004 ST dated 10.09.2004].

(iii) The taxable service of production or processing of goods for, or on behalf of, the client is exempt from service tax subject to the following conditions:

- (i) goods are produced or processed using raw material or semi-finished goods supplied by the client;
- (ii) the goods so produced or processed are returned back to the said client for use in or in relation to the manufacture of any other goods (goods falling under the First Schedule of the Central Excise Tariff Act, 1985) on which "appropriate excise duty is payable" i.e., the final product should not be wholly exempt or subject to 'Nil' rate of duty.

In this context the expression "production or processing of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production or processing, subject to the condition that such production or processing does not amount to manufacture within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 [Notification No. 8/2005 ST dated 1.03.2005].

"Manufacture" includes any process,—

- (i) incidental or ancillary to the completion of a manufactured product; and
- (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, or
- (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account. [Section 2(f) of the Central Excise Act, 1944]

(iv) The taxable service of production or processing of goods for, or on behalf of, the client under the category of business auxiliary service provided by any person in the course of manufacture of,—

- (a) cut and polished diamonds and gem stones; or
- (b) plain and studded jewellery of gold and other precious metals,

falling under Chapter 71 of the Central Excise Tariff Act, 1985 is exempt from the whole

4.44 Service tax & VAT

of service tax leviable thereon [Notification No. 21/2005 ST dated 07.06.2005].

- (v) Business auxiliary service, in relation to production or processing of parts and accessories used in the manufacture of cycles, cycle rickshaws and hand-operated sewing machines, for, or on behalf of, the client has been granted an abatement of 30% from the gross amount charged for such service. This abatement is available when the gross amount charged from the client is inclusive of the cost of inputs and input services, whether or not supplied by the client.

However, the exemption is not available in cases where –

- (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under Notification No. 12/2003 ST dated 20.06.2003 [Notification No. 23/2006 ST dated 02.06.2006].

Clarifications:

(i) Master Circular No. 96/7/2007 ST dated 23.08.2007

Business auxiliary service [Section (105)(zzb)]	23.08.07	Whether commission received by distributors for distribution of mutual fund units is liable to Service Tax under business auxiliary service?	Distributors receive commission from mutual fund for providing services relating to purchase and sale of Mutual fund units. Services provided by such distributors are in the nature of commission agent and are, thus, liable to service tax under business auxiliary service [section 65(105)(zzb)].
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(ii) DOF No. 334/13/2009 TRU dated 06.07.2009

Manufacture of non-excisable goods liable to service tax: Since the business auxiliary service does not include any activity that amounts to “manufacture of excisable goods”, thus, even if a process of manufacture is undertaken for the client, but the resultant product does not fall under the category of excisable goods, such as alcoholic beverages, the service tax would be attracted.

Sub-brokers not liable to service tax as commission agents: The sub-brokers are excluded from the purview of service tax as the entire broking charges are anyway taxable at the hands of stock-broker. Sub-brokers should also not be charged to service tax as commission agents under business auxiliary service.

4.47 COMMERCIAL TRAINING OR COACHING SERVICES

Effective date 1st July 2003.

Definitions:

"Commercial training or Coaching" means any training or coaching provided by a commercial training or coaching center [Section 65(26)].

"Commercial training or Coaching Centre" means 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 preschool coaching and training centre or 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 [Section 65(27)].

Scope of taxable service shall include any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching [Section 65(105)(zzc)].

Exemptions:

(i) Taxable services, provided in relation to commercial training or coaching by, -

- (a) a vocational training institute;
- (b) a recreational training institute;

to any person are exempt from the whole of the service tax leviable thereon. However, this exemption is not available to the taxable services provided in relation to commercial training or coaching by a computer training institute.

Explanation - For the purposes of this notification, -

- (i) "a vocational training institute" means a commercial training or coaching centre which provides vocational coaching or training that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching;
- (ii) "recreational training institute" means a commercial training or coaching centre which provides coaching or training relating to recreational activities such as dance, singing, martial arts, hobbies.
- (iii) "computer training institute" means a commercial training or coaching centre which provides coaching or training relating to computer software or hardware [Notification No. 24/2004 ST dated 10.09.2004].

(ii) The taxable services provided by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of any other institute or establishment, leading to issuance of any certificate or degree or

4.46 Service tax & VAT

educational qualification recognised by law for the time being in force, to any person, are also exempt from the whole of the service tax leviable thereon. However, this exemption shall not be applicable if the charges for such services are paid by the person undergoing such course or curriculum directly to the commercial or coaching centre [Notification No. 10/2003 ST dated 20.06.2003]

Clarifications:

Circular No. 107/01/2009 ST dated 28.01.2009 has clarified following issues in respect of commercial training or coaching centres:-

(i) Commercial nature of the institute: The services provided by all institutes or establishments including institutes run by charitable trusts or on no-profit basis are leviable to service tax for the following reasons:

- (a) The definition commercial training or coaching center has no mention that such institute must have 'commercial' (i.e. profit making) intent or motive and since the phrase '**commercial training or coaching center**' has been defined in a statute, there is no scope to add or delete words while interpreting the same. Therefore, there is no reason to give a restricted meaning to the phrase, and
- (b) Service tax, unlike direct taxes, is chargeable on the gross amount received towards the service charges, irrespective of whether the venture is 'profit making, loss making or charity oriented' in its motive or its outcome.

The word "commercial" used in the phrase is with reference to the activity of training or coaching and not to the nature or activity of the institute providing the training or coaching.

(ii) Vocational Training Institutes: 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 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.

(iii) Post school education: The following points have been clarified in respect of post-school education:

- (a) The following Institutes fall under the category of institutes/establishments which issue diploma or certificate recognized by the law for the time being in force and hence are 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

Gamut And Coverage of Taxable Services 4.47

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) *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 does not fall under the category of institutes/establishments which issue diploma or certificate recognized by the law for the time being in force and hence is taxable under the category of “commercial coaching and training services”.*
- (c) *From the year 2005 onwards, a technical institution or establishment (which is otherwise recognized being a university, or affiliate college) not having AICTE approval cannot be called to be the one issuing any certificate or diploma or degree or any educational qualification recognized by the law for the time being in force and thus be within the ambit of service tax. 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).*
- (e) *Diplomas or certificates in collaboration with certain foreign institutes/universities: The diplomas or certificates issued by private institutes in collaboration with certain foreign institutes universities cannot be called as the one ‘recognized by the law for the time being in force’ unless such a diploma/ certificate has been specifically recognized by the statutory authorities such as UGC, AICTE. Consequently, such institutes would not fall under the exempted category and would be subjected to tax.*

4.48 ERRECTION, COMMISSIONING AND INSTALLATION SERVICES

Effective date 1st July 2003.

Definitions:

“Erection, commissioning or installation” means any service provided by a commissioning and installation agency, in relation to,—

- (i) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise; or
- (ii) installation of—
- (a) electrical and electronic devices, including wirings or fittings therefor; or

4.48 Service tax & VAT

- (b) plumbing, drain laying or other installations for transport of fluids; or
- (c) heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work; or
- (d) thermal insulation, sound insulation, fire proofing or water proofing; or
- (e) lift and escalator, fire escape staircases or travelators; or
- (f) such other similar services [Section 65(39a)].

"Commissioning and installation agency" means any agency providing service in relation to erection, commissioning or installation [Section 65(29)].

Scope of taxable service shall include any service provided or to be provided to any person by a commissioning and installation agency in relation to erection, commissioning and installation [Section 65(105)(zzd)].

Exemptions:

- (i) In case of erection, commissioning or installation, under a contract for supplying a plant, machinery or equipment or structures and erection, commissioning or installation of such plant, machinery or equipment or structures, an abatement of 67% of the gross amount charged is granted. Accordingly, service tax is payable only on 33% of the gross amount charged for erection commissioning or installation and supply of plant, machinery or equipment. It is optional for the commissioning and installation agency to avail this abatement. The gross amount (33% of which is chargeable to service tax) charged from the *recipient of service* shall include the value of the plant, machinery, equipment, parts and any other material sold by the commissioning and installation agency, during the course of providing erection commissioning or installation service.

However, the exemption is not available in cases where:

- (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of Cenvat Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under the *Notification No. 12/2003 ST, dated 20.06.2003* [Notification No. 1/2006 ST dated 01.03.2006].

4.49 FRANCHISE SERVICES

Effective date 1st July 2003.

Definitions:

"Franchise" means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved [Section 65(47)].

"Franchisor" means any person who enters into franchise with a franchisee and includes any associate of franchisor or a person designated by franchisor to enter into franchise on his behalf and the term "franchisee" shall be construed accordingly [Section 65(48)].

Scope of taxable service shall include any service provided or to be provided to a franchisee, by the franchiser in relation to franchise [Section 65(105)(zze)].

4.50 INTERNET CAFÉ'S SERVICES

Effective date 1st July 2003.

Definitions:

"Internet cafe" means a commercial establishment providing facility for accessing internet [Section 65(57)].

Scope of taxable service shall include any service provided or to be provided to any person, by any internet café in relation to access of internet [Section 65(105)(zzf)].

4.51 MANAGEMENT, MAINTENANCE OR REPAIR SERVICES

Effective date 1st July 2003.

Definitions:

"Management, maintenance or repair" means any service provided by-

- (i) any person under a contract or an agreement; or
- (ii) a manufacturer or any person authorised by him, in relation to,—
 - (a) management of properties, whether immovable or not;
 - (b) maintenance or repair of properties, whether immovable or not; or
 - (c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle.

Here,

- (a) "goods" includes computer software;
- (b) "properties" includes information technology software [Section 65(64)].

Scope of taxable service shall include any service provided or to be provided any person, by any person in relation to maintenance or repair [Section 65(105)(zzg)].

Clarifications:

- (i) **Master Circular No. 96/7/2007 ST dated 23.08.2007**

Management, maintenance or repair [Section	23.08.07	Services provided by any person to a customer in relation to management, maintenance or repair is	Explanation to section 65(64) provides that "goods" includes computer software.
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4.50 Service tax & VAT

(105)(zzg)]		liable to service tax [section 65(105)(zzg)]. "Management, maintenance or repair" includes maintenance or repair of any goods, excluding motor vehicle [section 65(64)]. Whether maintenance or repair of software is liable to service tax?	Since, maintenance or repair of any goods is liable to service tax, services provided in relation to maintenance or repair or servicing of computer software is liable to service tax under "management, maintenance or repair" service [section 65(105)(zzg)].
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(ii) Circular No. 110/4/2009 ST dated 23.02.2009

Levy of service tax on repair/renovation/widening of roads: Commercial or industrial construction service specifically excludes construction or repairs of roads. However, management, maintenance or repair provided under a contract or an agreement in relation to properties, whether immovable or not, is leviable to service tax under management, maintenance or repair services. There is no specific exemption under this service for maintenance or repair of roads etc. Reading the definitions of these two taxable services in tandem leads to the conclusion that while construction of road is not a taxable service, management, maintenance or repair of roads are in the nature of taxable services, attracting service tax.

Types of activities that can be called as 'construction of road' are:

- (i) Laying of a new road
- (ii) Widening of narrow road to broader road (such as conversion of a two lane road to a four lane road)
- (iii) Changing road surface (graveled road to metalled road/ metalled road to blacktopped/ blacktopped to concrete etc)

Types of activities that fall under the category of maintenance or repair of roads are:

- (i) Resurfacing
- (ii) Renovation
- (iii) Strengthening
- (iv) Relaying
- (v) Filling of potholes

4.52 TECHNICAL TESTING AND ANALYSIS SERVICES

Effective date 1st July 2003.

Definitions:

"Technical testing and analysis" means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or information technology software or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals.

Here, "technical testing and analysis" includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals [Section 65(106)].

"Technical testing and analysis agency" means any agency or person engaged in providing service in relation to technical testing and analysis [Section 65(107)].

Scope of taxable service shall include any service provided or to be provided to any person, by a technical testing and analysis agency, in relation to technical testing and analysis [Section 65(105)(zzh)].

Exemptions:

- (i) Service provided or to be provided to any person, by a Government owned State or District level laboratory in relation to testing and analysis of water quality is exempt from the whole of service tax leviable thereon [Notification No. 6/2006 ST dated 01.03.2006].
- (ii) The technical testing and analysis services of new drugs, including vaccines and herbal remedies, on human participants so as to ascertain the safety and efficacy of such drugs by a Clinical Research Organization (CRO) (approved to conduct clinical trials by the Drugs Controller General of India) has been exempted from the whole of service tax leviable thereon [Notification No. 11/2007 ST dated 01.03.2007].

4.53 TECHNICAL INSPECTION AND CERTIFICATION SERVICES

Effective date 1st July 2003.

Definitions:

"Technical inspection and certification" means inspection or examination of goods or process or material or information technology software or any immovable property to certify that such goods or process or material or immovable property qualifies or maintains the specified standards, including functionality or utility or quality or safety or any other characteristic or parameters, but does not include any service in relation to inspection and certification of pollution levels [Section 65(108)].

"Technical inspection and certification agency" means any agency or person engaged in providing service in relation to technical inspection and certification [Section 65(109)].

4.52 Service tax & VAT

Scope of taxable service shall include any service provided or to be provided to any person by a technical inspection and certification agency, in relation to technical inspection and certification [Section 65(105)(zzi)].

4.54 AIRPORT SERVICES

Effective date: 10th September 2004

Definitions:

“Airport” has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994 [Section 65(3c)].

“Airport” means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934 [Section 2(b) of the Airports Authority of India Act, 1994].

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

“Civil enclave” has the meaning assigned to it in clause (i) of section 2 of the Airports Authority of India Act, 1994 [Section 65(24a)].

“Civil Enclave” means the area, if any, allotted at an airport belonging to any armed force of the Union, for use by persons availing of any air transport services from such airport or for the handling of baggage or cargo by such service, and includes land comprising of any building and structure on such area [Section 2(i) of the Airports Authority of India Act, 1994].

Scope of taxable service shall include any service provided or to be provided to any person, by airports authority or any person authorised by it, in an airport or a civil enclave [Section 65(105)(zzm)].

4.55 TRANSPORT OF GOODS BY AIR SERVICES

Effective date: 10th September 2004

Definitions:

“Aircraft” has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934 [Section 65(3a)].

“Aircraft” means any machine, which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth’s surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines [Section 2(1) of the Aircraft Act, 1934].

“Aircraft” operator means any person who provides the service of transport of goods or passengers by aircraft [Section 65(3b)].

Scope of taxable service shall include any service provided or to be provided to any person,

by an aircraft operator, in relation to transport of goods by aircraft [Section 65(105)(zzn)].

Exemptions:

- (i) The taxable service provided to any person, by an aircraft operator, in relation to transport of export goods by aircraft is exempt from the whole of the service tax leviable thereon [Notification No. 29/2005 ST dated 15.07.2005].

4.56 BUSINESS EXHIBITION SERVICES

Effective date: 10th September 2004

Definition:

“Business exhibition” means an exhibition,—

- (a) to market; or
- (b) to promote; or
- (c) to advertise; or
- (d) to showcase,

any product or service, intended for the growth in business of the producer or provider of such product or service, as the case may be [Section 65(19a)].

Scope of taxable service shall include any service provided or to be provided to an exhibitor, by the organiser of a business exhibition, in relation to business exhibition [Section 65(105)(zzo)].

Exemptions:

- (i) The taxable service provided in relation to business exhibition of goods by the organiser of business exhibition to a manufacturer of goods falling under Chapters 57, 61, 62 and 63 of the Central Excise Tariff Act, 1985 is exempt from the whole of the service tax leviable thereon subject to following conditions:
 - (a) prior to availment of exemption under this notification, the said manufacturer has exported goods falling under Chapters 57, 61, 62 and 63 of the Central Excise Tariff Act, 1985 (hereinafter referred to as the said goods) and is registered as exporter of said goods with any of the following organisations, namely :
 - (i) Apparel Export Promotion Council;
 - (ii) Carpet Export Promotion Council;
 - (iii) The Cotton Textiles Export Promotion Council;
 - (iv) Handloom Export Promotion Council;
 - (v) The Indian Silk Export Promotion Council;
 - (vi) Powerloom Development & Export Promotion Council;

4.54 Service tax & VAT

- (vii) Synthetic & Rayon Textiles Export Promotion Council;
- (viii) Wool & Woollens Export Promotion Council;
- (ix) Wool Industry Export Promotion Council;
- (x) Jute Manufacturers Development Council;
- (b) the exemption shall be claimed by the said manufacturer for the said service received;
- (c) the exemption claimed by the said manufacturer shall be provided by way of refund of service tax paid on the said service;
- (d) the said manufacturer claiming the exemption has actually paid the service tax on the said service;
- (e) no CENVAT credit of service tax paid on the said service has been taken under the CENVAT Credit Rules, 2004.

Such exemption shall be given effect to in the following manner, namely:

- (a) the person liable to pay service tax under section 68 of the said Finance Act shall pay service tax as applicable on the said service provided to the said manufacturer and such person shall not be eligible to claim exemption for the said service;
- (b) the said manufacturer shall claim the exemption by filing a claim for refund of service tax paid on the said service to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture or warehouse;
- (c) the claim for refund shall be filed on a quarterly basis, within sixty days from the end of the relevant quarter during which payment of the value of the said service and the service tax thereon has been made;
- (d) the refund claim shall be accompanied by documents evidencing payment of service tax on the said service for which claim for refund of service tax paid is filed;
- (e) 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 service has been actually used by the said manufacturer in relation to business exhibition of the said goods manufactured by him, refund the service tax paid on the said service.

Such exemption shall be valid upto 31st March, 2009 [Notification No. 43/2007 ST dated 29.11.2007].

4.57 TRANSPORT OF GOODS BY ROAD (BY A GOODS TRANSPORT AGENCY)

Effective date: 1st January 2005

Definitions:

“Goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 [Section 65(50a)].

“Goods Carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods [Section 2(14) of the Motor Vehicles Act, 1988].

“Goods transport agency” means any person who provides service in relation to transport of goods by road, and issues consignment note, by whatever name called [Section 65(50b)].

Scope of taxable service shall include any service provided or to be provided to any person, by a goods transport agency, in relation to transport of goods by road in a goods carriage [Section 65(105)(zzp)].

Exemptions:

- (i) 75% of the gross amount charged from the customer by a goods transport agency for providing the taxable service in relation to transport of goods by road in a goods carriage is exempt from payment of service tax. In other words, service tax shall be levied only on 25% of the gross amount charged from the customer [Notification No. 1/2006 ST dated 01.03.2006].
- (ii) The taxable service provided by a goods transport agency to *any person*, in relation to transport of fruits, vegetables, eggs or milk by road in a goods carriage is exempt from the whole of service tax leviable thereon [Notification No. 33/2004 ST dated 03.12.2004].
- (iii) The taxable service provided by a goods transport agency to *any person*, in relation to transport of goods by road in a goods carriage is exempt from the whole of service tax leviable thereon where, -
 - (i) the gross amount charged on consignments transported in a goods carriage does not exceed Rs.1500; or
 - (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs.750.

Here, “an individual consignment” means all goods transported by a goods transport agency by road in a goods carriage for a consignee [Notification No. 34/2004 ST dated 13.12.2004].

- (iv) Person making payment towards freight would be liable to pay service tax, in case the consignor or the consignee of the goods transported is one of the following -
 - (i) Factory registered under or governed by the Factories Act;
 - (ii) Company established by or under the Companies Act;

4.56 Service tax & VAT

- (iii) Corporation established by or under any law;
- (iv) Society registered under Societies Registration Act or similar law;
- (v) Co-operative society established by or under any law;
- (vi) Dealer of excisable goods, registered under the Central Excise law; or
- (vii) Any body corporate established, or a partnership firm registered, by or under any law.

In cases other than those mentioned above, the service tax is to be paid by the goods transport agency. The goods transport agencies are required to issue a consignment note (even in the abovementioned seven cases) other than in cases where the service in relation to transport of goods by road is wholly exempted from service tax. The consignment note should be serially numbered and should contain the names of the consignor and consignee, registration number of the goods carriage used for transport of goods, details of goods transported, place of origin and destination and person liable for paying service tax [Notification No. 35/2004 ST dated 03.12.2004].

- (v) *Exemption to certain services provided to a goods transport agency: The following services, provided to a goods transport agency for transportation of goods by road in the said goods carriage, are exempt from the whole of the service tax:*
 - (a) *Services provided by a clearing and forwarding agent in relation to clearing and forwarding operations [Section 65(105)(j)],*
 - (b) *Services provided by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise [Section 65(105)(k)],*
 - (c) *Services provided by a cargo handling agency in relation to cargo handling services [Section 65(105)(zr)],*
 - (d) *Services provided by a storage or warehouse keeper in relation to storage and warehousing of goods [Section 65(105)(zza)],*
 - (e) *Services provided by any person in relation to business auxiliary service [Section 65(105)(zzb)],*
 - (f) *Services provided by any other person, in relation to packaging activity [Section 65(105)(zzzf)],*
 - (g) *Services provided by any other person, in relation to support services of business or commerce, in any manner [Section 65(105)(zzzq)],*
 - (h) *Services provided 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 [Section 65(105)(zzzzj)].*

The above exemptions are granted subject to the condition that the invoice issued by

such service provider, providing services should mention the name and address of the goods transport agency and also the name and date of the consignment note, by whatever name called, issued in his behalf Notification No. 1/2009 ST dated 05.01.2009].

Clarifications:

(i) Circular No. 97/8/2007 ST dated 23.08.2007

Issues relating to credit of service tax with respect to goods transport agency's services

(a) Issue: Whether a manufacturer or taxable service provider having credit balance in his account can utilize that credit for payment of service tax on goods transport by road, as a consignor or as a consignee?

Clarification: In terms of rule 3(4) of the CENVAT Credit Rules 2004, CENVAT credit can be utilized for the following payments:

- (a) any duty of excise payable on any final product;
- (b)
- (c)
- (d) service tax on any **output service**

In terms of the CENVAT Credit Rules, 'output service' means any taxable service provided by the provider of taxable service to the service receiver. Further, the definition of 'provider of taxable service' includes a person liable to pay service tax. Therefore, reading the two definitions in conjunction, it is clear that, to form 'output service', taxable service has to be actually provided by the 'provider of taxable service'. Even if due to a legal fiction, a consignor or a consignee qualifies to fall under the definition of 'a person liable to pay service tax' (and consequently a 'provider of taxable service'), it cannot be said that he has actually provided any taxable service. The service provided by a Goods Transport Agent (GTA) for which the consignor or the consignee is made liable to pay service tax does not become an 'output service' for such consignor or the consignee. Therefore, the service tax payable by the consignor or consignee on transportation of goods by road cannot be paid through credit accumulated by such consignor or consignee. For example, a manufacturer of steel sheets procures duty paid steel ingots as input and avails CENVAT credit of the excise duty paid on ingots. He clears his finished goods, i.e., steel sheets on payment of excise duty and sends the same to his customer, engaging the service of a goods transport agency. In this case, he pays service tax on service received by him for transportation of the goods. However, the input credit taken on steel ingots cannot be used for payment of service tax applicable to goods transport agency. The reason is that the such manufacturer (consignor) is not the service provider. The transport service is being provided by the 'goods transport agency' and the excise assessee pays the service tax only for the reason that the liability for payment of service tax has been shifted to the service receiver. Accordingly, the consignor or the consignee has to be pay service tax in cash on goods transport by road service.

4.58 Service tax & VAT

(b) Issue: Whether a consignee can take credit of the amount paid as service tax either by himself (as consignee) or by the consignor or by the Goods Transport Agency?

Clarification: As per Rule 3 of the CENVAT Rules, 2004, CENVAT credit of, inter alia, service tax leviable and paid on any 'input services' can be taken. The rule does not distinguish as to who (i.e. the GTA, the consignor or the consignee himself) has paid the aforesaid tax. The only condition required to be satisfied is that the consignee must be a manufacturer of excisable goods or a provider of taxable service and the service must be in the nature of 'input service' for such activity. In case of inward transportation of inputs or capital goods, such service (being specifically mentioned under the definition of 'input service') would qualify to be called as 'input service' and, thus, the service tax paid (by any of the persons mentioned above) on it would be eligible as credit to the receiver if he is either a manufacturer of excisable goods or a provider of taxable service.

(c) Issue: Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

Clarification: This issue has been examined in great detail by the CESTAT in the case of *M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (006) STR 0249 Tri-D]*. In this case, CESTAT has made the following observations:-

"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions".

Similarly, in the case of *M/s Ultratech Cements Ltd vs CCE Bhavnagar 2007-TOIL-429-CESTAT-AHM*, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer / consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The

phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that,-

"place of removal" means-

- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty ;
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed."

It is, therefore, clear that for a manufacturer /consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer /consignor may claim that the sale has taken place at the destination point because in terms of the sale contract /agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

Following two points may be noted here:

- (i) The Tribunal's decision in the case of *Gujarat Ambuja Cement Ltd.* has not been accepted in the case of *India Cements Ltd. v. CCE (2007) 8 STR 43 (CESTAT)* and the issue has been referred to a Large Bench.
- (ii) With effect from 01.04.2008, the definition of input service has been amended so as to substitute the words "clearance of final products from the place of removal" "with the words clearance of final products, upto the place of removal".

(ii) Circular No. 104/07/2008-ST dated 06.08.2008

Issues relating to classification of ancillary activities in relation to goods transport agency's services

(a) 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

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4.60 Service tax & VAT

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. 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'.

4.58 CONSTRUCTION SERVICES IN RESPECT OF COMMERCIAL OR INDUSTRIAL BUILDINGS OR CIVIL STRUCTURES

Effective date: 10th September 2004

Definition:

“Commercial or industrial construction service” means—

- (a) construction of a new building or a civil structure or a part thereof; or
- (b) construction of pipeline or conduit; or
- (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or
- (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit,

which is—

- (i) used, or to be used, primarily for; or
- (ii) occupied, or to be occupied, primarily with; or
- (iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams [Section 65(25b)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to commercial or industrial construction service [Section 65(105)(zzq)].

Exemptions:

- (i) In case of commercial or industrial construction services, service tax shall be levied only on 33% of the gross charges. This exemption shall not apply in such cases where the taxable services provided are only completion and finishing services in relation to building or civil structure. Further, this exemption shall also not apply in such cases where:

4.62 Service tax & VAT

- (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the Cenvat Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under the *Notification No. 12/2003-S.T., dated 20.06.2003*.

The “gross amount charged” shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service [Notification No. 1/2006 ST dated 01.03.2006].

- (ii) With effect from 01.06.2007, commercial or industrial construction service and services provided in relation to the execution of works contract provided to any person by any other person in relation to construction of port or other port from are exempt from whole of the service tax leviable thereon.

It has been declared that-

- (i) commercial or industrial construction service or services provided in relation to the execution of works contract in relation to construction of port or other port shall not include services of completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port; and
- (ii) “port” and “other port” have the meanings respectively assigned to them in clauses (81) and (76) of section 65 of the Finance Act [Notification No.25/2007 ST dated 22.05.2007].

4.59 INTELLECTUAL PROPERTY SERVICES OTHER THAN COPYRIGHTS

Effective date: 10th September 2004

Definitions :

“**Intellectual property right**” means any right to intangible property, namely, trade marks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright [Section 65(55a)].

“**Intellectual property service**” means,—

- (a) transferring, temporarily; or
 - (b) permitting the use or enjoyment of,
- any intellectual property right [Section 65(55b)].

Scope of taxable service shall include service provided or to be provided to any person, by the holder of intellectual property right, in relation to intellectual property service [Section 65(105)(zzr)].

Exemptions:

- (i) Service provided by the holders of intellectual property rights are exempt from service tax to the extent of cess paid towards the import of technology under the provisions of section 3 of the Research and Development Cess Act in relation to such intellectual property services [Notification No. 17/2004 ST dated 10.09.2004].

4.60 OPINION POLL SERVICES

Effective date: 10th September 2004

Definitions:

“Opinion poll” means any service designed to secure information on public opinion regarding social, economic, political or other issues [Section 65(75a)].

“Opinion poll agency” means any person engaged in providing any service in relation to opinion poll [Section 65(75b)].

Scope of taxable service shall include any service provided or to be provided to any person, by an opinion poll agency, in relation to opinion poll [Section 65(105)(zzs)].

4.61 OUTDOOR CATERING

Effective date: 10th September 2004

Definitions:

“Caterer” means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion [Section 65(24)].

“Outdoor caterer” means a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such services [Section 65(76a)].

Scope of taxable service shall include any service provided or to be provided to any person, by an outdoor caterer [Section 65(105)(zzt)].

Exemptions:

- (i) Only 50% of the gross amount of taxable services provided by an outdoor caterer shall be charged to service tax. This exemption shall apply in cases where the outdoor caterer also provides food and the invoice, bill or challan issued for this purpose indicates that it is inclusive of charges for supply of food. However, the exemption is not available in cases where
 - (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the Cenvat Credit Rules, 2004; or

4.64 Service tax & VAT

- (ii) the service provider has availed the benefit under the *Notification No. 12/2003-Service Tax, dated 20.06.2003*.

Here, "food" means a substantial and satisfying meal [*Notification No. 1/2006 ST dated 01.03.2006*].

4.62 TV OR RADIO PROGRAMME PRODUCTION SERVICES

Effective date: 10th September 2004

Definitions:

"Programme" means any audio or visual matter, live or recorded, which is intended to be disseminated by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations [Section 65(86a)].

"Programme producer" means any person who produces a programme on behalf of another person [Section 65(86b)].

Scope of taxable service shall include any service provided or to be provided to any person, by a programme producer, in relation to a programme [Section 65(105)(zzu)].

4.63 SURVEY AND EXPLORATION OF MINERAL SERVICES

Effective date: 10th September 2004

Definition:

"Survey and exploration of mineral" means geological, geophysical or other prospecting, surface or sub-surface surveying or map making service, in relation to location or exploration of deposits of mineral, oil or gas [Section 65(104a)].

Scope of taxable service shall include any service provided or to be provided to any person, by any person, in relation to survey and exploration of mineral [Section 65(105)(zzv)].

4.64 PANDAL OR SHAMIANA SERVICES

Effective date: 10th September 2004

Definitions:

"Pandal or shamiana" means a place specially prepared or arranged for organizing an official, social or business function. Here, "social function" includes marriage [Section 65(77a)].

"Pandal or shamiana contractor" means a person engaged in providing any service, either directly or indirectly, in connection with the preparation, arrangement, erection or decoration of a pandal or shamiana and includes the supply of furniture, fixtures, lights and lighting fittings, floor coverings and other articles for use therein [Section 65(77b)].

Gamut And Coverage of Taxable Services 4.65

Scope of taxable service shall include any service provided or to be provided to any person, by a pandal or shamiana contractor in relation to a pandal or shamiana in any manner and also includes the services, if any, provided or to be provided as a caterer [Section 65(105)(zzw)].

Exemptions:

- (i) Where a pandal and shamiana contractor provides taxable services in relation to a pandal or shamiana in any manner, including services rendered as a caterer, service tax shall be paid on 70% of the gross amount. This exemption shall apply only in cases where such pandal or shamiana contractor also provides catering services, that is, supply of food and the invoice, bill or challan issued for this purpose indicates that it is inclusive of charges for catering service. However, the exemption is not available in cases where
 - (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the Cenvat Credit Rules, 2004; or
 - (ii) the service provider has availed the benefit under the *Notification No. 12/2003-Service Tax, dated 20.06.2003*.

Here, "food" means a substantial and satisfying meal [Notification No. 1/2006 ST dated 01.03.2006].

4.65 TRAVEL AGENTS'S SERVICES (OTHER THAN AIR/RAIL TRAVEL AGENTS)

Effective date: 10th September 2004

Definition:

"Travel agent" means any person engaged in providing any service connected with booking of passage for travel, but does not include air travel agent and rail travel agent [Section 65(115a)].

Scope of taxable service shall include any service provided or to be provided to any person, by a travel agent, in relation to the booking of passage for travel [Section 65(105)(zzx)].

4.66 FORWARD CONTRACT SERVICES

Effective date: 10th September 2004

Definitions:

"Forward contract" has the meaning assigned to it in clause (c) of section 2 of the Forward Contracts (Regulation) Act, 1952 [Section 65(46a)].

"Recognised association" has the meaning assigned to it in clause (j) of section 2 of the Forward Contracts (Regulation) Act, 1952 [Section 65(89a)].

"Recognised association" means an association to which recognition for the time being has been granted by the Central Government under section 6 of the Forward Contracts

4.66 Service tax & VAT

(Regulation) Act, 1952 in respect of goods or classes of goods specified in such recognition [Section 2(j) of the Forward Contracts (Regulation) Act, 1952].

“Registered association” has the meaning assigned to it in clause (jj) of section 2 of the Forward Contracts (Regulation) Act, 1952 [Section 65(89b)].

“Registered association” means an association to which for the time being a certificate of registration has been granted by the Commission under section 14B of the Forward Contracts (Regulation) Act, 1952 [Section 2(jj) of the Forward Contracts (Regulation) Act, 1952].

Scope of taxable service shall include any service provided or to be provided to any person, by a member of a recognised association or a registered association, in relation to a forward contract [Section 65(105)(zzy)].

4.67 TRANSPORT OF GOODS THROUGH PIPELINE OR OTHER CONDUIT

Effective date: 16th June 2005

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to transport of goods other than water, through pipeline or other conduit [Section 65(105)(zzz)].

4.68 SITE PREPARATION AND CLEARANCE, EXCAVATION, EARTH MOVING AND DEMOLITION SERVICES

Effective date: 16th June 2005

Definition:

“Site formation and clearance, excavation and earthmoving and demolition” includes,—

- (i) drilling, boring and core extraction services for construction, geophysical, geological or similar purposes; or
- (ii) soil stabilization; or
- (iii) horizontal drilling for the passage of cables or drain pipes; or
- (iv) land reclamation work; or
- (v) contaminated top soil stripping work; or
- (vi) demolition and wrecking of building, structure or road,

but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies [Section 65(97)(a)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities [Section 65(105)(zza)].

Exemptions:

- (i) The site formation and clearance, excavation and earthmoving and demolition and such other similar activities provided to any person by any other person in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports are exempt from the whole of service tax leviable thereon [Notification No. 17/2005 ST dated 07.06.2005].

4.69 DREDGING SERVICES OF RIVERS, PORTS, HARBOURS, BACKWATERS AND ESTUARIES

Effective date: 16th June 2005

Definition:

“Dredging” includes removal of material including, silt, sediments, rocks, sand, refuse, debris, plant or animal matter in any excavating, cleaning, deepening, widening or lengthening, either permanently or temporarily, of any river, port, harbour, backwater or estuary [Section 65(36a)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to dredging [Section 65(105)(zzzb)].

4.70 SURVEY AND MAP MAKING SERVICES OTHER THAN BY GOVERNMENT DEPARTMENTS

Effective date: 16th June 2005

Definition:

“Survey and map-making” means geological, geophysical or any other prospecting, surface, sub-surface or aerial surveying or map-making of any kind, but does not include survey and exploration of mineral [Section 65(104)(b)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making [Section 65(105)(zzzc)].

4.71 CLEANING SERVICES OTHER THAN IN RELATION TO AGRICULTURE, HORTICULTURE, ANIMAL HUSBANDRY OR DAIRYING

Effective date: 16th June 2005

Definition:

“Cleaning activity” means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of—

- (i) commercial or industrial buildings and premises thereof; or
- (ii) factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof,

4.68 Service tax & VAT

but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying [Section 65(24)(b)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to cleaning activity [Section 65(105)(zzzd)].

4.72 SERVICES IN RESPECT OF MEMBERSHIP OF CLUBS OR ASSOCIATIONS

Effective date: 16th June 2005

Definition:

“Club or association” means any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include—

- (i) any body established or constituted by or under any law for the time being in force; or
- (ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or
- (iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or
- (iv) any person or body of persons associated with press or media [Section 65(25)(a)].

Scope of taxable service shall include any service provided or to be provided to its members, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount [Section 65(105)(zzze)].

Exemptions:

- (i) The taxable services provided or to be provided by a resident welfare association to its members have been exempted from whole of the service tax leviable thereon. However, the exemption is subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed Rs.3,000 per month. This service would otherwise be taxable under the category of membership of clubs or association [Notification No.8 /2007 ST dated 01.03.2007].
- (ii) *Services provided by following twenty two export promotion councils, which were earlier taxable under the category of club or association services, have now been 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].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

(i) Club or association [Section (105)(zzze)]	23.08.07	“Club or association” is defined as any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include such person or body of persons engaged in any activity having objectives which are of a charitable nature. Whether a club or association enjoying exemption under the provisions of Income Tax Act as a public charitable	Exemption under the Income Tax Act on the ground of being a public charitable institution is of no consequence or relevance for service tax purposes. Levy of service tax is entirely governed by the provisions contained in the Finance Act, 1994 and the rules made thereunder. “Charity” is defined as “aid given to the poor, the suffering or the general community for religious, educational,
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4.70 Service tax & VAT

		institution gets automatically excluded from levy of service tax under section 65(105)(zzze) read with section 65(25a) of the Finance Act, 1994?	economic, public safety, or medical purposes”, and “charitable” is defined as “dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received” [Black’s Law Dictionary]. Whether a club or association is engaged in activity having objectives which are of a charitable nature or not is to be determined purely on the basis of the facts and circumstances of the case.
(ii) Club or association [Section (105)(zzze)]	23.08.07	Services provided by a resident welfare association to its members under club or association service [section 65(105) (zzze)] is exempted from service tax vide notification No.8/2007-Service Tax, dated 01.03.07, subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed three thousand rupees per month. Whether a resident welfare association registered as a co-operative society with the Registrar of Co-operative Societies is entitled for the benefit of service tax exemption under notification No.8/2007-Service Tax, dated 01.03.2007 or not?	A resident welfare association, even if it is registered as a co-operative society with the Registrar of Co-operative Societies, is eligible to avail of exemption from levy of service tax vide notification No.8/2007-Service Tax, dated 01.03.2007 provided the following conditions are satisfied, namely:- (i) The exemption is available for the services specified under section 65(105)(zzze) of the Finance Act, 1994 and provided or to be provided by the association to its members. (ii) The sole criterion for membership of the resident welfare association is the residential status of a person in a residential complex or locality i.e., membership of the association is restricted to the

Gamut And Coverage of Taxable Services 4.71

			residents of the complex or locality. (iii) The value of total consideration received from an individual member by the association for providing the services does not exceed Rs.3,000/- per month.
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4.73 PACKAGING SERVICES

Effective date: 16th June 2005

Definition:

“Packaging activity” means packaging of goods including pouch filling, bottling, labeling or imprinting of the package, but does not include any packaging activity that amounts to 'manufacture' within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 [Section 65(76)(b)].

"Manufacture" includes any process,—

- (i) incidental or ancillary to the completion of a manufactured product; and
- (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, or
- (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account - [Section 2(f) of the Central Excise Act, 1944].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to packaging activity [Section 65(105)(zzzf)].

4.74 MAILING LIST COMPILATION AND MAILING SERVICES

Effective date: 16th June 2005

Definition:

“Mailing list compilation and mailing” means any service in relation to—

- (i) compiling and providing list of name, address and any other information from any source; or

4.72 Service tax & VAT

- (ii) sending document, information, goods or any other material in a packet, by whatever name called, by addressing, stuffing, sealing, metering or mailing, for, or on behalf of, the client [Section 65(63)(a)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to mailing list compilation and mailing [Section 65(105)(zzzg)].

4.75 CONSTRUCTION SERVICES IN RESPECT OF RESIDENTIAL COMPLEXES

Effective date: 16th June 2005

Definitions:

“Construction of complex” means—

- (a) construction of a new residential complex or a part thereof; or
- (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
- (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex [Section 65(30)(a)].

“Residential complex” means any complex comprising of—

- (i) a building or buildings, having more than twelve residential units;
- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system,

located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause,—

- (a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;
- (b) "residential unit" means a single house or a single apartment intended for use as a place of residence [Section 65(91a)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to construction of complex [Section 65(105)(zzzh)].

Exemptions:

- (i) 67% of the value of the taxable service provided to any person by any other person

Gamut And Coverage of Taxable Services 4.73

in relation to construction of complex is exempt from the service tax leviable thereon. This exemption shall not apply in cases where the taxable services provided in relation to a residential complex are only completion and finishing services. Further, this exemption is not available in cases where,

- (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under *Notification No. 12/2003 ST dated 20.06.2003*.

The "gross amount charged" shall include the value of goods and materials supplied or provided or used for providing the said taxable service by the service provider [Notification No. 1/2006 ST dated 01.03.2006].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

Construction of complex [Section (105)(zzzh)]	23.08.07	Whether service tax is liable under construction of complex service [section 65(105)(zzzh)] on builder, promoter, developer or any such person,- (a) who gets the complex built by engaging the services of a separate contractor, and (b) who builds the residential complex on his own by employing direct labour?	(a) In a case where the builder, promoter, developer or any such person builds a residential complex, having more than 12 residential units, by engaging a contractor for construction of the said residential complex, the contractor in his capacity as a taxable service provider (to the builder / promoter / developer / any such person) shall be liable to pay service tax on the gross amount charged for the construction services under 'construction of complex' service [section 65(105)(zzzh)]. (b) If no other person is engaged for construction work and the builder / promoter / developer / any such person undertakes construction work on his own without engaging the services of any other person, then in such cases,- (i) service provider and service
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4.74 Service tax & VAT

			recipient relationship does not exist, (ii) services provided are in the nature of self-supply of services. Hence, in the absence of service provider and service recipient relationship and the services provided are in the nature of self-supply of services, the question of providing taxable service to any person by any other person does not arise.
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(ii) **Circular No. 108/02/2009 ST dated 29.01.2009**

Levy of service tax on builders

Issue: Whether service tax would be applicable in a case where developer / builder/promoter enters into an agreement, with the ultimate owner for selling a dwelling unit in a residential complex at any stage of construction (or even prior to that) and who makes construction linked payment?

Clarification: The initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax.

Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter / builder / developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

4.76 REGISTRAR TO AN ISSUE'S SERVICES

Effective date: 1st May 2006

Definitions:

"Registrar to an issue" means any person carrying on the activities in relation to an issue including collecting application forms from investors, keeping a record of applications and money received from investors or paid to the seller of securities, assisting in determining the basis of allotment of securities, finalising the list of persons entitled to allotment of securities and processing and despatching allotment letters, refund orders or certificates and other related documents [Section 65(89c)].

"Issue" means an offer of sale or purchase of securities to, or from, the public or the holder of securities [Section 65(59a)].

Scope of taxable service shall include any service provided or to be provided to any person, by a registrar to an issue, in relation to sale or purchase of securities [Section 65(105)(zzzi)].

4.77 SHARE TRANSFER AGENT'S SERVICES

Effective date: 1st May 2006

Definition:

"Share transfer agent" means any person who maintains the record of holders of securities and deals with all matters connected with the transfer or redemption of securities or activities incidental thereto [Section 65(95a)].

Scope of taxable service shall include any service provided or to be provided to any person, by a share transfer agent, in relation to securities [Section 65(105)(zzzj)].

4.78 AUTOMATED TELLER MACHINE OPERATIONS, MAINTENANCE OR MANAGEMENT SERVICES

Effective date: 1st May 2006

Definitions:

"Automated teller machine" means an interactive automatic machine designed to dispense cash, accept deposit of cash, transfer money between bank accounts and facilitate other financial transactions [Section 65(9a)].

"Automated teller machine operations, maintenance or management service" means any service provided in relation to automated teller machines and includes site selection, contracting of location, acquisition, financing, installation, certification, connection, maintenance, transaction processing, cash forecasting, replenishment, reconciliation and value-added services [Section 65(9b)].

4.76 Service tax & VAT

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to automated teller machine operations, maintenance or management service, in any manner [Section 65(105)(zzzk)].

4.79 RECOVERY AGENT'S SERVICES

Effective date: 1st May 2006

Scope of taxable service shall include any service provided or to be provided to a banking company or a financial institution including a non-banking financial company or any other body corporate or a firm, by any person, in relation to recovery of any sums due to such banking company or financial institution, including a non-banking financial company, or any other body corporate or a firm, in any manner [Section 65(105)(zzzl)].

4.80 SALE OF SPACE OR TIME FOR ADVERTISEMENT, OTHER THAN IN PRINT MEDIA

Effective date: 1st May 2006

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organisation.

Here, "sale of space or time for advertisement" includes,—

- (i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet;
- (ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organisation; and
- (iii) aerial advertising

"Print media" means,—

- (i) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867;
- (ii) "book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes [Section 65(105)(zzzm)].

4.81 SPONSORSHIP SERVICES PROVIDED TO ANY BODY CORPORATE OR FIRM, OTHER THAN SPONSORSHIP OF SPORTS EVENTS

Effective date: 1st May 2006

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Definition:

“Sponsorship” includes naming an event after the sponsor, displaying the sponsor’s company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors [Section 65(99a)].

Scope of taxable service shall include any service provided or to be provided to any body corporate or firm, by any person receiving sponsorship, in relation to such sponsorship, in any manner, but does not include services in relation to sponsorship of sports events [Section 65(105)(zzzn)].

4.82 TRANSPORT OF PASSENGERS EMBARKING ON INTERNATIONAL JOURNEY BY AIR, OTHER THAN ECONOMY CLASS PASSENGERS

Effective date: 1st May 2006

Definitions:

“Aircraft operator” means any person who provides the service of transport of goods or passengers by aircraft [Section 65(3b)].

“Passenger” means any person boarding, at any customs airport, an aircraft for performing an international journey, but does not include—

- (i) a person who has arrived at such customs airport from a place outside India and is in transit through India, provided that he does not pass through immigration and does not leave customs area and continues his journey to a place outside India; and
- (ii) a person employed or engaged by the aircraft operator in any capacity on board the aircraft [Section 65(77c)].

“Customs airport” means an airport appointed as such under clause (a) of sub-section (1) of section 7 of the Customs Act, 1962 [Section 65(35a)].

The Board may, by notification in the Official Gazette, appoint the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods. [Section 7(1)(a) of the Customs Act, 1962]

“International journey”, in relation to a passenger, means his journey from any customs airport on board any aircraft to a place outside India [Section 65(56a)].

Scope of taxable service shall include any service provided or to be provided to any passenger, by an aircraft operator, in relation to scheduled or non-scheduled air transport of such passenger embarking in India for international journey, in any class other than economy class.

4.78 Service tax & VAT

Explanation 1.—For the purposes of this sub-clause, economy class in an aircraft meant for scheduled air transport of passengers means,—

- (i) where there is more than one class of travel, the class attracting the lowest standard fare; or
- (ii) where there is only one class of travel, that class.

Explanation 2.—For the purposes of this sub-clause, in an aircraft meant for non-scheduled air transport of passengers, no class of travel shall be treated as economy class [Section 65(105)(zzzo)].

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

(i) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	An international journey commencing from an Indian airport involves stopover / transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York). Whether service tax would be liable in such case on the value indicated in the ticket for the entire journey or only on that part of the value attributable to the first sector (Mumbai-Dubai) of the journey?	Aim of the passenger is to travel from Mumbai to New York. Actual destination of the international journey is the criterion to decide the value of the service (in this case, New York). Stopover / transfer at intermediate airports, being merely incidental and part of the main journey, is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66. Service tax in such cases is leviable on the total consideration of a single composite service relating to the entire journey. i.e., value indicated on the ticket for the entire journey.
(ii) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	An international journey (say Delhi-Mumbai-London) includes travel in a domestic sector (Delhi – Mumbai) as part of the international journey. Whether service tax is liable on the value of whole journey or after excluding the value	In this case, the journey is a single composite journey. The aim of the passenger is to travel from India to a place outside India. Part of the travel in the domestic sector cannot be segregated from the single journey. Service tax is, therefore, leviable on the total value of the ticket treating the

Gamut And Coverage of Taxable Services 4.79

		attributable to the domestic sector from the total value of the ticket?	domestic sector as integral part of the international journey without excluding the value attributable, if any, to travel in the domestic sector.
(iii) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	An international journey commences from an airport outside India and completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney). Whether service tax is liable for Mumbai-Dubai sector only or on the total value of the ticket?	In this case, the journey being a single one and the aim of the passenger is not to travel from India to a place outside India, service tax is not leviable under section 65(105)(zzzo).
(iv) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	Whether ticket issued outside India for an international journey commencing from India (say Delhi-London) is liable to service tax?	Service tax is payable by the service provider, namely aircraft operator, for the taxable service provided. Place of purchase/ issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with section 66. Service tax is leviable as long as the passenger embarks in India for an international journey, in any class other than economy class.
(v) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	Whether service tax is liable on the total value of the ticket or only half the value of the ticket in the case of round trip / return ticket (say Delhi-London-Delhi)?	Service tax is leviable on the total value of the ticket.

4.80 Service tax & VAT

4.83 TRANSPORT OF GOODS BY RAIL

Effective date: 1st May 2006

Scope of taxable service shall include 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 [Section 65(105)(zzzp)].

Exemptions:

- (i) In case of transport of goods by containers in rail an abatement of 70% of the gross amount charged by such service provider for providing the said taxable service, is granted. However, this exemption is not available in cases where:
 - (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004; or
 - (ii) the service provider has availed the benefit under Notification No. 12/2003-ST, dated 20.06.2003 [Notification No. 1/2006 ST dated 01.03.2006].

4.84 BUSINESS SUPPORT SERVICES

Effective date: 1st May 2006

Definition:

“Support services of business or commerce” means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation.—For the purposes of this clause, the expression “infrastructural support services” includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security [Section 65(104c)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner [Section 65(105)(zzzq)].

4.85 AUCTIONEERS' SERVICES, OTHER THAN AUCTION OF PROPERTY UNDER DIRECTIONS OR ORDERS OF A COURT OF LAW OR AUCTION BY THE CENTRAL GOVERNMENT

Effective date: 1st May 2006

Definition:

“Auction of property” includes calling the auction or providing a facility, advertising or illustrating services, pre-auction price estimates, short-term storage services, repair or restoration services in relation to auction of property [Section 65(7a)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to auction of property, movable or immovable, tangible or intangible, in any manner, but does not include auction of property under the directions or orders of a court of law or auction by the Government [Section 65(105)(zzzr)].

4.86 PUBLIC RELATIONS SERVICES

Effective date: 1st May 2006

Definition:

“Public relations” includes strategic counselling based on industry, media and perception research, corporate image management, media relations, media training, press release, press conference, financial public relations, brand support, brand launch, retail support and promotions, events and communications and crisis communications [Section 65(86c)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to managing the public relations of such person, in any manner [Section 65(105)(zzzs)].

4.87 SHIP MANAGEMENT SERVICES

Effective date: 1st May 2006

Definition:

“Ship management service” includes,—

- (i) the supervision of the maintenance, survey and repair of ship;
- (ii) engagement or providing of crews;
- (iii) receiving the hire or freight charges on behalf of the owner;
- (iv) arrangements for loading and unloading;

4.82 Service tax & VAT

- (v) providing for victualling or storing of ship;
- (vi) negotiating contracts for bunker fuel and lubricating oil;
- (vii) payment, on behalf of the owner, of expenses incurred in providing services or in relation to the management of ship;
- (viii) the entry of ship in a protection or indemnity association;
- (ix) dealing with insurance, salvage and other claims; and
- (x) arranging of insurance in relation to ship [Section 65(96a)].

Scope of taxable service shall include any service provided or to be provided to any person, under a contract or an agreement, by any other person, in relation to ship management service [Section 65(105)(zzzt)].

4.88 INTERNET TELECOMMUNICATION SERVICES

Internet telecommunication services were liable to service tax as internet telephony services up to 15.05.2008. However, with effect from 16.05.2008, the Finance Act, 2008 has substituted the internet telephony services with the internet telecommunication services and accordingly section 65(57a), and 65(105)(zzzu) have been amended.

Effective date: 1st May 2006 to 15th May 2008 as Internet telephony service

16th May 2008 onwards as Internet telecommunication service

Definitions:

“Internet telecommunication service” includes,—

- (i) internet backbone services, including carrier services of internet traffic by one internet service provider to another internet service provider,
- (ii) internet access services, including provision of a direct connection to the internet and space for the customer's web page,
- (iii) provision of telecommunication services, including fax, telephony, audio conferencing and video conferencing, over the internet [Section 65(57a)].

Scope of taxable service shall include service provided or to be provided, to any person, by any other person, in relation to internet telecommunication service [Section 65(105)(zzzu)].

“Internet” means a global information system which is logically linked together by a globally unique address, based on Internet Protocol or its subsequent enhancements or upgradations and is able to support communications using the Transmission Control Protocol or Internet Protocol suite or its subsequent enhancements or upgradations and all other Internet Protocol compatible protocols [Section 65(56b)].

4.89 TRANSPORT OF PERSONS BY CRUISE SHIP

Effective date: 1st May 2006

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to transport of such person embarking from any port or other port in India, by a cruise ship.

Explanation.—For the purposes of this sub-clause, “cruise ship” means a ship or vessel used for providing recreational or pleasure trips, but does not include a ship or vessel used for private purposes or a ship or vessel of, or less than, 15 net tonnage [Section 65(105)(zzzv)].

4.90 CREDIT CARD, DEBIT CARD, CHARGE CARD OR OTHER PAYMENT CARD RELATED SERVICES

Effective date: 1st May 2006

Definition:

“Credit card, debit card, charge card or other payment card service” includes any service provided,—

- (i) by a banking company, financial institution including non-banking financial company or any other person (hereinafter referred to as the issuing bank), issuing such card to a card holder;
- (ii) by any person to an issuing bank in relation to such card business, including receipt and processing of application, transfer of embossing data to issuing bank's personalization agency, automated teller machine personal identification number generation, renewal or replacement of card, change of address, enhancement of credit limit, payment updation and statement generation;
- (iii) by any person, including an issuing bank and an acquiring bank, to any other person in relation to settlement of any amount transacted through such card.

Explanation - For the purposes of this sub-clause, “acquiring bank” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card;

- (iv) in relation to joint promotional cards or affinity cards or co-branded cards;
- (v) in relation to promotion and marketing of goods and services through such card;
- (vi) by a person, to an issuing bank or the holder of such card, for making use of automated teller machines of such person; and
- (vii) by the owner of trade marks or brand name to the issuing bank under an agreement, for use of the trade mark or brand name and other services in relation to such card, whether or not such owner is a club or association and the issuing bank is a member of such club or association.

4.84 Service tax & VAT

Explanation - For the purposes of this sub-clause, an issuing bank and the owner of trade marks or brand name shall be treated as separate persons [Section 65(33a)].

Scope of taxable service shall include any service provided or to be provided to any person, by any other person, in relation to credit card, debit card, charge card or other payment card service, in any manner [Section 65(105)(zzzw)].

4.91 TELECOMMUNICATION SERVICES

Effective date: 1st June 2007

Definitions:

“Telecommunication service” means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 and includes-

- (i) voice mail, data services, audio tex services, video tex services, radio paging;
- (ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;
- (iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;
- (iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;
- (v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic call-back, call answer, voice mail, voice menus and video conferencing;
- (vi) private network services including provision of wired or wireless telecommunication link between points for the exclusive use of the client;
- (vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and
- (viii) communication through facsimile, pager, telegraph and telex,

but does not include service provided by-

- (a) any person in relation to on-line information and database access or retrieval or both;

- (b) a broadcasting agency or organisation in relation to broadcasting; and
- (c) any person in relation to internet telecommunication services [Section 65(109a)].

“Telegraph authority” has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 and includes a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of that Act [Section 65(111)].

“Telegraph authority” means the Director General of Posts and Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act [Section 3(6) of the Indian Telegraph Act, 1885]

Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India;

Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working-

- (a) of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above India, or Indian territorial waters, and
- (b) of telegraphs other than wireless telegraphs within any part of India [Section 4(1) of the Indian Telegraph Act, 1885]

“Pager” means an instrument, apparatus or appliance which is a non-speech, one way personal calling system with alert and has the capability of receiving, storing and displaying numeric or alpha-numeric messages [Section 65(77)].

“Telegraph” has the meaning assigned to it in clause (1) of section 3 of the Indian Telegraph Act, 1885 [Section 65(110)].

“Telegraph” means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means [Section 3(1) of the Indian Telegraph Act, 1885].

“Telex” means a typed communication by using teleprinters through telex exchanges [Section 65(112)].

“Facsimile (Fax)” means a form of telecommunication by which fixed graphic images, such as printed texts and pictures are scanned and the information converted into electrical signals for transmission over the telecommunication system [Section 65(42)].

Scope of taxable service shall include service provided or to be provided to any person by the telegraph authority in relation to telecommunication service [Section 65(105)(zzzx)].

4.86 Service tax & VAT

Clarifications:

(i) Master Circular No. 96/7/2007 ST dated 23.08.2007

Telecommunication Service [Section (105)(zzzx)]	23.08.07	Whether service tax is liable on the amount collected as surcharge for delayed payment of telephone bills?	An amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and, therefore, does not form part of the value of taxable service under section 67 read with Service Tax (Determination of Value) Rules, 2006.
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(ii) Circular No. 97/8/2007 ST dated 23.08.2007

Admissibility of CENVAT credit on service tax paid in respect of mobile phones : In the Service Tax Credit Rules, 2002, it was prescribed that credit of service tax was admissible only on telephone connection installed in the business premises. A clarification to this effect was also issued vide circular No. 59/8/2003-ST, dated 20.6.2003, in the context of the Service Tax Credit Rules, 2002. However, in the CENVAT Credit Rules, 2004 no such condition has been prescribed. Therefore, w.e.f. 10.9.2004, credit of service tax paid in respect of mobile telephone service is admissible, provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods.

4.92 MINING SERVICES

Effective date: 1st June 2007

Scope of the taxable service shall include service provided or to be provided to any person, by any other person in relation to mining of mineral, oil or gas [Section 65(105)(zzzy)].

4.93 SERVICES OF RENTING OF IMMOVABLE PROPERTY

Effective date: 1st June 2007

Definition:

“Renting of immovable property” includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

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

Explanation 1 - For the purposes of this clause, “for use in the course or furtherance of business or commerce” includes use of immovable property as factories, office buildings,

warehouses, theatres, exhibition halls and multiple-use buildings.

Explanation 2 – For the removal of doubts, it is hereby declared that for the purposes of this clause “renting of immovable property” includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property [Section 65(90a)].

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

Explanation 1 - For the purposes of this sub-clause, “immovable property” includes—

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

but does not include-

- (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
- (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
- (c) land used for educational, sports, circus, entertainment and parking purposes; and
- (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2.—For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce [Section 65(105)(zzzz)].

Therefore, in case of a single composite contract of renting of immovable property involving part of property for use in commerce or business and part of it for residential/accommodation purposes, the total value of the contract shall be the taxable value.

Exemptions:

- (i) With effect from 01.06.2007, the taxable service of renting of immovable property is exempt from so much of the service tax leviable thereon as is in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies.

However, any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons

4.88 Service tax & VAT

shall not be treated as property tax for the purposes of deduction from the gross amount charged.

Further, wherever the period for which property tax paid is different from the period for which service tax is paid, property tax proportionate to the period for which service tax is paid shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

Example:

Property tax paid for April to September = Rs.12,000/-
Rent received for April = Rs.1,00,000/-
Service tax payable for April = Rs.98,000/- (1,00,000–2,000) x
applicable rate of service tax

[Notification No. 24/2007 ST dated 22.05.2007]

Clarifications:

(i) Master Circular No. 96/7/2007 ST dated 23.08.2007

Services of renting of immovable property [Section (105)(zzzz)]	04.01.08 vide Circular No.98/1/2008 ST dated 04.01.2008 amending the basic circular	Whether commercial or industrial construction service or works contract service used for construction of an immovable property, could be treated as input service for the output service namely renting of immovable property service under the CENVAT Credit Rules, 2004?	Right to use immovable property is leviable to service tax under renting of immovable property service. Commercial or industrial construction service or works contract service is an input service for the output namely immovable property. Immovable property is neither subjected to central excise duty nor to service tax. Input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property is neither 'service' nor 'goods' as referred to above, input credit cannot be taken.
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(ii) Circular No. 109/03/2009 dated 23.02.2009

Service tax on movie theatres

Issue: Whether the activity of screening of film supplied by a film distributor would fall under any of the taxable services and accordingly, whether the theatre owners are required to pay service tax on amount received by them from distributors?

Clarification: Screening of a movie is not a taxable service in the following three types of arrangements:

- (i) Where the contract between the theatre owner and the distributor is on revenue sharing basis i.e. a fixed and pre-determined portion i.e. percentage of revenue earned from selling the tickets goes to the theater owner and the balance goes to the distributor; (In this case, the two contracting parties act on principal-to-principal basis and one does not provide service to another. Hence, in such an arrangement the activities are not covered under service tax.)*
- (ii) Where the contract between the theatre owner and the distributor is on revenue sharing basis i.e. a fixed and pre-determined portion i.e. percentage of revenue earned from selling the tickets goes to the theater owner and the balance goes to the distributor; (In this case, the two contracting parties act on principal-to-principal basis and one does not provide service to another. Hence, in such an arrangement the activities are not covered under service tax.)*
- (iii) Where the theater owner buys the print/CD of the film on payment of a fixed price and thereafter screens it in his theater; (This transaction is also not subject to service tax being in the nature of sale of goods.)*

Screening of a movie will be liable to service tax in a case where the distributor leases out the theater and

- (a) the theater owner get a fixed rent from the distributor and*
- (b) the profit or loss from exhibiting the film is borne by the distributor.*

In such a case the service provided by the theater owner would be categorized as 'Renting of immovable property for furtherance of business or commerce. Thus, the theater owner would be liable to pay tax on the rent received from the distributor.

Issue: The arrangement most commonly entered into between a theater owner and a distributor is that the theater owner screens the movie for fixed number of days under a contract. The proceeds earned through sale of tickets go to the distributor but the theatre owner receives a fixed sum depending upon the number of days of screening. In this arrangement, the advertisement and display of posters etc. is done by the distributor. Under this arrangement, the fixed amount contracted is given to the theater owner by the distributor irrespective of the fact whether the movie runs well or not. However, there is no rental arrangement between the theater owner and the distributor. Whether in this arrangement, the theater owner provides 'Business Support Service' to the distributor and hence is liable to pay service tax on the fixed amount received by the theater owner?

Clarification: By definition 'Business Support Service' is a generic service of providing 'support to the business or commerce of the service receiver'. In other words the principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider. In the instant case the theatre owner screens/exhibits a movie that has been provided by the

4.90 Service tax & VAT

distributor. Such an exhibition is not a support or assistance activity but is an activity on its own accord. That being the case such an activity cannot fall under 'Business Support Service'.

4.94 SERVICES INVOLVED IN THE EXECUTION OF A WORKS CONTRACT

Effective date: 1st June 2007

In a works contract, sales tax/VAT is levied on the transfer of property in goods involved in the execution of such works contract. Service tax is levied on the service element involved in the execution of a works contract.

Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.—For the purposes of this sub-clause, “works contract” means a contract wherein,—

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out,—
 - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
 - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
 - (c) construction of a new residential complex or a part thereof; or
 - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
 - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects [Section 65(105)(zzzza)].

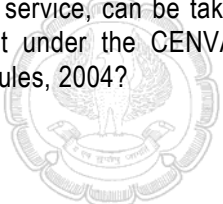
Thus, the definition of works contract is an exhaustive one.

Clarifications:

Master Circular No. 96/7/2007 ST dated 23.08.2007

(i) Services involved in the execution of works contract	23.08.07	Whether CENVAT credit of duty paid on capital goods and service tax paid on input services can be taken by a service provider who opts to pay an amount equivalent to	Rule 3(2) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides that the provider of taxable service opting to pay
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Gamut And Coverage of Taxable Services 4.91

[Section (105)(zzzza)]		two per cent. of the gross amount charged for the works contract instead of paying service tax at the rate specified in section 66, under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, notified vide notification No.32/2007-Service Tax dated 22.05.07?	service tax under the composition scheme is not entitled to take CENVAT credit of duty on inputs, used in or in relation to the said works contract, under the provisions of the CENVAT Credit Rules, 2004. There is no restriction under notification No.32/2007-Service Tax dated 22.05.07 to take CENVAT credit of duty paid on capital goods and service tax paid on input services.
(ii) Services involved in the execution of works contract [Section (105)(zzzza)]	04.01.08 vide Circular No.98/1/2008 ST dated 04.01.2008 amending the basic circular	Whether excise duty paid on goods, subjected to levy of VAT/sales tax under works contract service, can be taken as credit under the CENVAT Credit Rules, 2004? 	Value for the purposes of levy of service tax under works contract service does not include the value pertaining to transfer of property in goods involved in the execution of a works contract leviable to VAT/sales tax. Works contract service provider is, therefore, not eligible to take credit of excise duty paid on such goods involved in the execution of works contract.
(iii) Services involved in the execution of works contract [Section (105)(zzzza)]	04.01.08 vide Circular No.98/1/2008 ST dated 04.01.2008 amending the basic circular	Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides option to pay service tax @ 2% of the gross amount charged for the works contract. However, the service provider opting for composition scheme for payment of service tax should exercise the option prior to payment of service tax. The issue pertains to,- (i) contracts entered into	Classification of a taxable service is determined based on the nature of service provided whereas liability to pay service tax is related to receipt of consideration. Vivisecting a single composite service and classifying the same under two different taxable services depending upon the time of receipt of the consideration is not legally sustainable. In view of the above, a service

4.92 Service tax & VAT

		prior to 01.06.07 for providing erection, commissioning or installation and commercial or residential construction service, and (ii) service tax has already been paid for part of the payment received under the respective taxable service. Whether in such cases, the service provider can revise the classification to works contract service from the respective classification and pay service tax for the amount received on or after 01.06.07 under the Composition Scheme?	provider who paid service tax prior to 01.06.07 for the taxable service, namely, erection, commissioning or installation service, commercial or industrial construction service or construction of complex service, as the case may be, is not entitled to change the classification of the single composite service for the purpose of payment of service tax on or after 01.06.07 and hence, is not entitled to avail the Composition Scheme.
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4.95 DEVELOPMENT AND SUPPLY OF CONTENT SERVICES

Effective date: 1st June 2007

Definition:

“**Development and supply of content**” includes development and supply of mobile value added services, music, movie clips, ring tones, wall paper, mobile games, data, whether or not aggregated, information, news and animation films [Section 65(36c)].

Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services [Section 65(105)(zzzzb)].

4.96 ASSET MANAGEMENT INCLUDING PORTFOLIO MANAGEMENT AND ALL FORMS OF FUND MANAGEMENT SERVICES

Effective date: 1st June 2007

Asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern is leviable to service tax under banking and other financial service.

Therefore, in order to cover asset management and similar services provided by persons, other than the ones covered under banking and other financial services, this category of service was introduced by the Finance Act, 2007.

Scope of taxable service shall include service provided or to be provided to any person, by

any other person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, in relation to asset management including portfolio management and all forms of fund management [Section 65(105)(zzzzc)].

4.97 DESIGN SERVICES

Effective date: 1st June 2007

Definition:

Services in relation to conceptualizing, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings are leviable to service tax under the fashion designing service. Services in relation to planning, design or beautification of spaces is leviable to service tax under the interior decorator's service. The Finance Act, 2007 has included design services provided to any person by any person other than an interior decorator and a fashion designer under this new category of service. The definition of this service reads as under:

"Design services" includes services provided in relation to designing of furniture, consumer products, industrial products, packages, logos, graphics, websites and corporate identity designing and production of three dimensional models [Section 65(36b)].

Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to design services, but does not include service provided by-

- (i) an interior decorator; and
- (ii) a fashion designer in relation to fashion designing [Section 65(105)(zzzzd)].

4.98 INFORMATION TECHNOLOGY SOFTWARE SERVICES

Effective date: 16th May 2008

Definition:

"Information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment [Section 65(53a)].

Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including,—

- (i) development of information technology software,
- (ii) study, analysis, design and programming of information technology software,
- (iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,

4.94 Service tax & VAT

- (iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the start-up phase of a new system, specifications to secure a database, advice on proprietary information technology software,
- (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 [Section 65(105)(zzzze)].

4.99 INVESTMENT MANAGEMENT SERVICES PROVIDED UNDER ULIP

Effective date: 16th May 2008

Unit-Linked Insurance Plan (ULIP) is an insurance product offered by life insurance companies combining both risk cover and benefits of investment. ULIP being a combination product, premium amount paid under ULIP consists of risk premium and investment component. Risk premium may be for life or health or any other authorized purposes. Unlike the case of traditional life insurance policies, policyholder of ULIP can choose portfolios for investment with different investment aims such as low, medium and high-risk category or combination thereof. ULIP enables the policyholder to take part in the scheme collectively and becoming the beneficiary like mutual funds. The investment risk is borne by the ULIP policyholder.

Scope of taxable service shall include service provided or to be provided to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

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

- (i) management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business; and
- (ii) the gross amount charged by the insurer from the policy holder for the said services provided or to be provided shall be equivalent to the difference between,—
 - (a) premium paid by the policy holder for the Unit Linked Insurance Plan policy; and
 - (b) the sum of premium paid for or attributable to risk cover, whether for life, health or other specified purposes, and the amount segregated for actual investment.

Illustration

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

Risk premium = Rs. 10

Amount actually invested = Rs. 85

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

- (iii) in addition to the amount referred to in clause (ii), the gross amount charged shall include any amount charged subsequently, whether or not periodically, by the insurer from the policy holder in relation to management of investment under unit linked life insurance business [Section 65(105)(zzzzf)].

4.100 STOCK EXCHANGE SERVICES IN RELATION TO SECURITIES

Effective date: 16th May 2008

Scope of taxable service shall include service provided or to be provided to any person, by a recognized stock exchange in relation to assisting, regulating or controlling the business of buying, selling or dealing in securities and includes services provided in relation to trading, processing, clearing and settlement of transactions in securities [Section 65(105)(zzzzg)].

4.101 COMMODITY EXCHANGE SERVICES

Effective date: 16th May 2008

Scope of taxable service shall include service provided or to be provided to any person, by a recognized association or a registered association in relation to assisting, regulating or controlling the business of the sale or purchase of any goods or forward contracts and includes services provided in relation to trading, processing, clearing and settlement of transactions in goods or forward contracts [Section 65(105)(zzzzh)].

4.102 PROCESSING AND CLEARING HOUSE SERVICES

Effective date: 16th May 2008

“Processing and clearing house” means any person including the clearing corporation authorised or assigned by a recognised stock exchange, recognised association or a registered association to perform the duties and functions of a clearing house in relation to,—

- (i) the periodical settlement of contracts for, or relating to, the sale or purchase of securities, goods or forward contracts and differences thereunder,
- (ii) the delivery of, and payment for, securities, goods or forward contracts;

4.96 Service tax & VAT

- (iii) any other matter incidental to, or connected with, securities, goods and forward contracts [Section 65(86d)].

Scope of taxable service shall include service provided or to be provided to any person, by a processing and clearing house in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts including any other matter incidental to, or connected with, such securities, goods and forward contracts [Section 65(105)(zzzzi)].

4.103 SUPPLY OF TANGIBLE GOODS SERVICES

Effective date: 16th May 2008

Transfer of the right to use any goods is leviable to sales tax / VAT as deemed sale of goods. Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods.

Transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods, is treated as service.

Scope of taxable service shall include service provided or to be 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 [Section 65(105)(zzzzj)].

4.104 COSMETIC AND PLASTIC SURGERY SERVICES

Effective date: 1st September 2009

Scope of taxable service shall include service provided or to be provided to any person, by any other person, in relation to cosmetic surgery or plastic surgery, but does not include any surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma [Section 65(105)(zzzzk)].

Clarifications:

D.O.F. No. 334/13/2009-TRU, dated 6-7-2009 has clarified that as a general rule, a procedure is considered surgical when it involves cutting of a patient's tissues or closure of a previously sustained wound. Commonly surgery is performed in a sterile environment with anesthesia and antiseptic conditions using surgical instruments. It also includes 'non-invasive' surgery. Some of the commonly known aesthetic/cosmetic surgeries are

- (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*



4.105 TRANSPORT OF COASTAL GOODS AND GOODS THROUGH INLAND WATER INCLUDING NATIONAL WATERWAYS

Effective date: 1st September 2009

Scope of taxable service shall include service provided or to be provided to any person, by any other person, in relation to transport of-

- (i) *coastal goods;*
- (ii) *goods through national waterway; or*
- (iii) *goods through inland water.*

Here,

- (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 [Section 65(105)(zzzzl)].

4.98 Service tax & VAT

4.106 LEGAL CONSULTANCY SERVICES

Effective date: 1st September 2009

Scope of taxable service shall include 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, in any manner. However, any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

Here, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual. [Section 65(105)(zzzzm)].

Thus, the legal consultancy services shall not be liable to service tax in the following cases,:-

- (a) where such service is provided by way of appearance before any court, tribunal or authority;
- (b) where the service provider and/or service recipient is an individual.

Self-examination questions

1. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Services provided by a mandap keeper from a religious place.
 - (ii) Services provided by call centres.
 - (iii) Services provided by medical transcription centers.
 - (iv) Surfing facilities provided by internet cafes.
2. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Services provided by multi-system operator to cable operators.
 - (ii) Maintenance services provided by M/s. Complete Software Solutions for computers sold by it.
 - (iii) Services provided by Sarwan Tent House in respect of pandal and shamiana for the purpose of holding a purely religious congregation.
 - (iv) Route navigation services provided by Airports Authority of India to various airlines.
3. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax.
 - (i) Service provided by a sub-broker to a main broker.
 - (ii) Services provided by a banking company or financial institutions to Government of India or a State government.
 - (iii) Services provided by the outdoor caterer to a client on a railway train.

- (iv) Premium paid on a life insurance policy.
- 4. State the conditions for availing the exemption from payment of service tax in respect of production or processing of goods for or on behalf of the client.
- 5. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Maintenance services provided in respect of shopping malls.
 - (ii) Service provided by goods transport agency in respect of transport of fruits, vegetables, eggs or milk.
 - (iii) Service provided by individual videographer.
 - (iv) Bottling services provided by a commercial concern.
- 6. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Survey and map-making services provided by 'Survey of India'.
 - (ii) Construction services provided in respect of a residential complex having 12 residential units.
 - (iii) Membership fee paid by chartered accountants to the Institute of Chartered Accountants of India.
 - (iv) 'XY' Ltd. provides service of sending documents and materials by addressing, sealing and mailing the envelope for or on behalf of 'AB' Ltd., its client.
- 7. What percentage of abatement is available from the gross amount charged in respect of the following services? State the necessary conditions for availing such abatements.
 - (i) Commercial or industrial construction service
 - (ii) Services in relation to pandal or shamiana in any manner, including services rendered as a caterer
 - (iii) Catering services
 - (iv) Services provided by a tour operator providing services solely of arranging or booking accommodation in relation to a tour
 - (v) Erection, commissioning or installation under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment.
- 8. Answer the following with reference to the Finance Act, 1994 as amended relating to applicability of service tax:
 - (i) Services provided by vaastu/feng shui consultants.
 - (ii) Service provided by an individual in respect of procuring the inputs and managing the inventory for a company.
 - (iii) Disinfecting services provided in relation to agriculture.

4.100 Service tax & VAT

- (iv) Floor and wall cleaning performed on the premises of non-commercial buildings.
- 9. Who is a registrar to an issue? Briefly discuss whether the services provided by him in relation to sale or purchase of securities are liable to service tax?
- 10. Briefly discuss the provisions of the Finance Act, 1994 as amended relating to service tax with respect to the following taxable services:
 - (i) Business exhibition service
 - (ii) Opinion poll service
 - (iii) Dry cleaning service
 - (iv) Storage and warehousing service
 - (v) Real estate agent's service

