

SERVICE TAX PROCEDURES

5.1 REGISTRATION [SECTION 69 & RULE 4 OF THE SERVICE TAX RULES, 1994]

5.1.1 Application: Application for registration is to be made by every person liable for paying the service tax in Form ST-1 within 30 days from the date on which service tax is levied or within 30 days from the date of commencement of business, whichever is later, to the concerned Superintendent of Central Excise having jurisdiction. The Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form as may be prescribed [Section 69(2)].

The following person or class of persons have been notified by the Central Government who shall make an application for registration under the provisions of section 69(2):-

- (i) an input service distributor; and
- (ii) any provider of taxable service whose aggregate value of taxable service in a financial year exceeds Rs.9,00,000.

Where a provider of taxable service provides one or more taxable services from one or more premises, the aggregate value of all such taxable services and from all such premises and not separately for each services or each premises shall be taken into account for computation of aggregate value of taxable service.

Here, “input service distributor” has the meaning assigned to it in clause (m) of rule 2 of the CENVAT Credit Rules, 2004. “Aggregate value of taxable service” means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67, charged by the service provider towards taxable services but does not include payments received towards such gross amount which are exempt from the whole of service tax under any notification other than *Notification No. 6/2005-Service Tax, dated the 1st March, 2005*.

The input service distributor shall make an application to the jurisdictional Superintendent of Central Excise in the prescribed form for registration within a period of 30 days of the commencement of business or 16.06.2005, whichever is later. The input service distributor shall furnish a return to the jurisdictional Superintendent of Central Excise in such form and at

5.2 Service tax & VAT

such frequency as prescribed under sub-rule (10) of rule 9 of CENVAT Credit Rules, 2004.

The provider of taxable service whose aggregate value of taxable service in a financial year exceeds Rs.9,00,000 shall make an application to the jurisdictional Superintendent of Central Excise in the prescribed form for registration within a period of 30 days of exceeding the aggregate value of taxable service of Rs.9,00,000.

5.1.2 Centralised registration: Sub-rule (2) of rule 4 provides that where a person, liable for paying service tax on a taxable service:

- (i) provides such service from more than one premises or offices; or
- (ii) receives such service in more than one premises or offices; or
- (iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax,

and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located.

Sub-rule (3) of rule 4 provides that in all cases where tax payer opts for centralised registration, including those who have applied for such registration but have not been granted such centralised registration, the registration shall be granted by the Commissioner of Central Excise having jurisdiction over the premises for which centralized registration is sought (i.e., the premises from where centralized billing or accounting is done).

However, such provisions shall not be applicable to the registration granted to the premises or offices having such centralised billing or centralised accounting systems, prior to the 2nd day of November, 2006.

Rule 4(3A) provides that where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise. However, where an assessee is providing more than one taxable service, he may make a single application mentioning therein all the taxable services provided by him [Rule 4(4)].

5.1.3 Certificate of registration: The Superintendent of Central Excise shall after due verification of the application form (Form ST-1), or an intimation under sub-rule (5A), as the case may be, grant a certificate of registration in Form ST-2 within 7 days from the date of receipt of the application or intimation. If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted [Rule 4(5)]. This may not be a solution for non granting of the certificate since the registration number is

required for payment of service tax, filing of returns, etc.

Change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or any additional information or detail intended to be furnished should be intimated in writing by the assessee to the jurisdictional Assistant/Deputy Commissioner of Central Excise. Such intimation should be made within a period of 30 days of such change [Rule 4(5A)].

Certificate of registration in Form ST-2 should indicate the details of all the taxable services provided by the service provider. Thus an assessee rendering multiple taxable services will be assessed by one Superintendent of Central Excise in respect of all the taxable services rendered by him.

When a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration [Rule 4(6)].

5.1.4 Surrender of certificate: Every registered assessee who ceases to provide taxable service shall surrender his registration certificate immediately to the Superintendent of Central Excise [Rule 4(7)].

On receipt of the certificate under sub-rule (7), the Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act/Rules/Notifications and thereupon cancel the registration certificate [Rule 4(8)].

Rule 4 does not provide for amendment of the registration certificate.

5.1.5 Service Tax Code Number (STC): Presently, different agencies of the Government use separate numbers for identification of individuals and business in relation to the activities concerning the agencies. The Director General of Foreign Trade (DGFT) allocates Importer Exporter Code No. (IEC No.) for identifying importers and exporters, the Income Tax Department issues the Permanent Account Number (PAN) for all Income Tax, Wealth Tax assesseees, the Central Excise Department is also registering the various manufacturers and allocating a separate series of registration numbers. The RBI separately used to allocate a CNX number for identification of the exporter.

CBE&C has also allotted service tax code number to all assesseees. STC is a 15 digit alphanumeric code. The first 10 digits of the code are 10 character PAN issued by Income tax authorities. Next two are 'ST'. Last three are numeric code 001, 002, 003 etc. The concerned person has to apply in a prescribed form to obtain STC. The main objective of allocating an alphanumeric number by the Government agencies is to identify the assesseees/exporters/importers. It is also used to identify in some cases the concerned office where the person would be assessed or registered. Further alphanumeric number helps in processing of the information in relation to the assessee on computers. Quoting of service tax code number on all the related documents has become compulsory from 1.7.2002.

5.4 Service tax & VAT

5.2 TAXABLE SERVICE TO BE PROVIDED OR CREDIT TO BE DISTRIBUTED ON INVOICE, BILL OR CHALLAN [RULE 4A OF THE SERVICE TAX RULES, 1994]

Rule 4A of the Service Tax Rules, 1994 provides that:

(1) Every person providing taxable service shall issue an invoice, or a bill, or a challan signed by such person or a person authorized by him in respect of such taxable service provided or to be provided. Such an invoice has to be issued within fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier. Further, the invoice, bill or challan shall be serially numbered and shall contain the following, namely:

- (i) the name, address and the registration number of such person;
- (ii) the name and address of the person receiving taxable service;
- (iii) description, classification and value of taxable service provided or to be provided; and
- (iv) the service tax payable thereon.

However, banking companies and financial institution including a non-banking financial company, or any other body corporate or any other person, providing service to *any person*, in relation to banking and other financial services are exempted from the requirement of issuing serially numbered invoices/bills/challans with the address of the recipient.

In case the service provider is a goods transport agency, an invoice, a bill or, a challan shall include a document containing the details of the consignment note number and date, gross weight of the consignment and other required information.

Where any payment towards the value of taxable service is not received and such taxable service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically, an invoice, a bill, or as the case may be, a challan shall be issued by the person providing such taxable service, not later than 14 days from the last day of the said period.

(2) Every input service distributor distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him, for each of the recipient of the credit distributed, and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely: -

- (i) the name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or as the case may be, challan issued under sub-rule (1);
- (ii) the name and address of the said input services distributor;
- (iii) the name and address of the recipient of the credit distributed;

- (iv) the amount of the credit distributed.

However, an input service distributor which is an office of a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person, providing service to *any person*, in relation to banking and other financial services are exempted from the requirement of serially numbering the invoice, bill or challan.

5.3 ISSUE OF CONSIGNMENT NOTE [RULE 4B OF THE SERVICE TAX RULES, 1994]

Any goods transport agency, which provides service in relation to transport of goods by road in a goods carriage, shall issue a consignment note to the *recipient of service*. However, where any taxable service in relation to transport of goods by road in a goods carriage is wholly exempted under section 93 of the Act, the goods transport agency shall not be required to issue the consignment note.

It has been clarified that “consignment note” means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains-

- (i) the name of the consignor and consignee,
- (ii) registration number of the goods carriage in which the goods are transported,
- (iii) details of the goods transported,
- (iv) details of the place of origin and destination,
- (v) person liable for paying service tax whether consignor, consignee or the goods transport agency.

5.4 PERSON LIABLE TO PAY SERVICE TAX [SECTION 68 & RULE 2(1)(d) OF THE SERVICE TAX RULES, 1994]

As per section 68(1), every person providing taxable service to any person, pays service tax at the rate specified in section 66 in the prescribed manner and within the prescribed period. At present, the rate of service tax specified in section 66 is 12%. *However, Notification No. 8/2009 ST dated 24.02.2009 has exempted all the taxable services specified in section 65(105) from so much of service tax leviable thereon under section 66 of the Finance Act, as is in excess of the rate of 10% of the value of taxable services. Therefore, the effective rate of service tax is 10%.* The period and the manner are prescribed in rule 6 of the Service Tax Rules, 1994 which have been discussed later.

However, in respect of certain services notified by the Central Government, the service tax thereon is paid by certain specified persons in the prescribed manner [Section 68(2)]. In pursuance of this power, the Central Government in Rule 2(1)(d) of Service Tax Rules, 1994 has notified specific class of persons who are liable to pay service tax.

Thus, as a general rule a service provider is liable to pay service tax, but in the cases and circumstances mentioned in Rule 2(1)(d), service receiver or the specified persons are liable

5.6 Service tax & VAT

to pay service tax.

Following list provides the notified taxable services and the specified persons/class of persons who are liable to pay service tax thereon as per Rule 2(1)(d) of Service Tax Rules, 1994:

- (i) in relation to general insurance business, the person liable to pay service tax is the insurer or re-insurer, as the case may be, providing such service.
- (ii) in relation to insurance auxiliary service provided by an insurance agent, the person liable to pay service tax is the person carrying on general insurance business or the life insurance business as the case may be, in India.
- (iii) in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India, the person liable to pay service tax is the recipient of such service.
- (iv) in relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is,-
 - (a) any factory registered under or governed by the Factories Act, 1948;
 - (b) any company formed or registered under the Companies Act, 1956;
 - (c) any corporation established by or under any law;
 - (d) any society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India;
 - (e) any co-operative society established by or under any law;
 - (f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder; or
 - (g) any body corporate established, or a partnership firm registered, by or under any law,the person liable for paying service tax is any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage.
- (v) in relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case be, the person liable for paying service tax is the mutual fund or asset management company, as the case may be, receiving such service.
- (vi) in relation to sponsorship service provided to any body corporate or firm located in India, the person liable to pay service tax is the body corporate or firm, as the case may be, who receives such sponsorship service.

5.4.1 Sub-contractors liable to service tax: A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. A question arises as to whether service tax is

liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work.

Circular No. 96/7/2007 ST dated 23.08.2007 has clarified that a sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.

Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

5.5 PAYMENT OF SERVICE TAX [RULE 6 OF THE SERVICE TAX RULES, 1994]

5.5.1 Due date for payment of service tax: Rule 6(1) *inter alia* provides that service tax on the value of taxable services received:

- (i) by an individual or a proprietary firm or a partnership firm during any quarter is payable by the **5th day of the month immediately following the said quarter; and**
- (ii) in other cases (company and HUF) during any calendar month is payable by the **5th day of the month immediately following the said calendar month.**

However, the month of March is an exception to this general rule. The service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year. For the month of March there is no distinction between the assesseees.

If the last day of payment of service tax is a public holiday, tax can be paid on next working day. [CBE&C Circular No. 63/12/2003 - S.T., dated 14.10.2003]

It is to be noted here that service tax is not payable on the amounts charged in the bills/invoice, but on the amounts actually **received**.

5.5.2 Due date for payment in case of e-payment of service tax: As per rule 6(1), where service tax is paid electronically through internet banking the service tax on the value of taxable services received:

- (i) by an individual or a proprietary firm or a partnership firm during any quarter is payable by the **6th day of the month immediately following the said quarter; and**
- (ii) in other cases (company and HUF) during any calendar month is payable by the **6th day of the month immediately following the said calendar month.**

The due date for the month of March remains the same i.e., 31st March.

5.8 Service tax & VAT

5.5.3 Services performed prior to the date of levy not liable for payment of service tax:

No service tax shall be payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable. The time of receipt of payment towards the value of services will not be relevant for this purpose.

5.5.4 Transactions with associated enterprise: In case of transactions of taxable services involving any associated enterprise, any payment received towards the value of taxable service includes any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax. Thus, service tax would be payable on such receipts as well [Explanation to rule 6(1)].

Here, "associated enterprise" has the meaning assigned to it in section 92A of the Income tax Act, 1961."

5.5.5 Advance payment of service tax: The assessee has been provided a facility vide sub-rule (1A) to make advance payment of service tax on his own volition and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period. Such facility shall be available when the assessee:

- (i) intimates the details of the amount of service tax paid in advance, to the Jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such payment, and
- (ii) indicates the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70.

5.5.6 Interest on delayed payment of service tax (Section 75) : Failure to pay service tax in time, including a part thereof, attracts simple interest at a rate not below 10% p.a. but not exceeding 36% p.a. as may be notified by the Central Government. Currently, the interest rate of 13% has been notified vide *Notification No. 26/2004 ST*. Further, failure to pay service tax also attracts penalty which has been discussed later in this Chapter.

5.5.7 Manner of payment: Service tax has to be paid to the credit of the Central Government in Form TR-6 challan (yellow colour) in the specified branches of the designated bank. The list of such Banks and Branches is available in every Commissionerate of Central Excise. Different heads of accounts have been specified for different taxable service by the Government under which payment has to be made. While making the payment of service tax to the credit of Central Government, head of account should be correctly and properly indicated under major and minor heads and sub-heads to avoid misclassification. In the TR-6 challan, account head of education cess should be shown separately.

TR-6 challan is to be filled in quadruplicate and tendered to the designated bank alongwith the payment of service tax. The bank returns two sets of TR-6 challans duly acknowledging payment, one for the assessee's record and the other to be submitted with the return.

Where the amount of service tax is paid in cash, the date of payment is the date on which cash is tendered to the designated bank. It has been clarified vide *ST Instructions F*

No.V/DGST/21(7)/Engg/16/2000/1976, dtd. 23.08.2001 of DGST that payment of service tax into non-designated banks would not amount to payment of service tax.

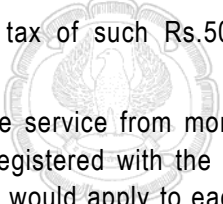
As per sub-rule (2A), the date of presentation of cheque to the bank designated by Central Board of Excise and Customs, in case the amount of service tax is paid by cheque, shall be considered as the date of payment subject to realization of cheque.

Payment should be rounded off in multiple of rupees [*CBE&C Circular No. 53/2/2003 S.T. dated 27.03.2003*].

Payment in case of multiple service provider: A multiple service provider (a service provider rendering more than one taxable service) can use single TR-6 challan for payment of service tax on different services. However, amounts attributable to each such service along with concerned accounting codes should be mentioned clearly in the column provided for this purpose in the TR-6 challan. Alternatively, separate TR-6 challans may be used for payment of service tax for each service provided by the service provider.

E-payment of service tax : The assessee who has paid service tax of Rs.50,00,000 or above in the preceding financial year or has already paid service tax of Rs.50,00,000 in the current financial year has to compulsorily deposit the service tax liable to be paid by him electronically, through internet banking [Proviso to sub-rule (2)].

The qualifying amount of service tax of such Rs.50 lakh shall be interpreted in the following manner:

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- (i) For a person providing taxable service from more than one premises, where each such premises is separately registered with the department for payment of service tax, the criterion of Rs.50 lakh would apply to each registered premises individually, as each registered premises is separately an assessee in terms of law. Similar is the situation in the case of a person paying service tax on taxable service received by him.

However, in case of a Large Taxpayer (LTU), the cumulative service tax paid by all registered premises of such Large Taxpayer will be taken into account for satisfaction of criterion of payment of service tax amount of Rs.50 lakh.

- (ii) If a person pays service tax from a registered premises for both the taxable services provided by him and the taxable service received by him on which he is liable to pay service tax, the cumulative service tax paid, i.e., service tax paid on taxable service provided from and service tax paid on taxable service received in such registered premises would be taken into account for the purposes of satisfaction of criterion of payment of service tax amount of Rs.50 lakh.
- (iii) Further, for the purposes of calculation of this amount of Rs.50 lakh the total service tax paid by cash plus CENVAT credit would be taken into account as service tax paid amount. Therefore, if an assessee has paid service tax of Rs.50 lakh (in preceding financial year or the current year) in cash plus CENVAT credit, such assessee, if he

5.10 Service tax & VAT

pays any further service tax in cash, would be required to make mandatory e-payment.

5.5.8 Self adjustment of excess service tax paid for services not wholly or partially rendered by the assessee: Under rule 6(3), the assessee is allowed to adjust against his subsequent period's liability the excess service tax paid by him for services which are not wholly or partially rendered by him for any reason provided he has refunded the amount charged and also the service tax thereon to the client.

The *Commissioner of Central Excise Mumbai - 1 vide Trade Notice No. 7/98- Service tax dated 13.10.1998* has clarified that in such cases of adjustment the assessee is required to file the details in respect of such *suo motu* adjustments done by him at the time of filing the service tax returns. The Return Form ST-3 also provides for enclosure of documentary evidence for adjustment of such excess service tax paid.

It is to be noted that rule 6(3) does not allow adjustment of excess payment of service tax *per se*, say due to clerical mistake etc. In such cases the assessee has to follow the procedure laid down in section 11B of Central Excise Act to claim the refund of excess tax paid.

5.5.9 Self adjustment of excess amount paid towards service tax liability: Rule 6(4A) provides that where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be. This sub-rule overrides the provision of sub-rule (4). (Sub-rule (4) of rule 6 provides for provisional assessment which is discussed later in this Chapter).

However, such an adjustment would be subject to the following conditions mentioned in rule 6(4B):

- (i) Self-adjustment of excess credit would not be allowed in case of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.
- (ii) Excess amount paid and proposed to be adjusted should not exceed Rs.1,00,000 for the relevant month or quarter. However, in case of assessee's opting for centralized registration excess amount can be adjusted without any monetary limit provided the excess amount paid is on account of delayed receipt of details of payments from branch offices.
- (iii) Adjustment can be made only in the succeeding month or quarter.
- (iv) The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of such adjustment.

5.5.10 Adjustment of excess amount paid as service tax in case of renting of immovable property service: In case of renting of immovable property service, a deduction of property taxes paid in respect of the immovable property is allowed from the gross amount

Service Tax Procedures 5.11

charged for renting of the said immovable property vide Notification No.24/2007 ST dated 22.05.2007. However, where any amount in excess of the amount required to be paid towards service tax liability has been paid on account of non-availment of such deduction, such excess amount may be adjusted against the service tax liability within 1 year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 days from the date of such adjustment [Sub-rule (4C)].

5.5.11 Special provision for payment of service tax in case of air travel agent: Rule 6(7) provides that the person liable for paying the service tax in relation to the services provided by an air travel agent, shall have the option:

- (i) to pay an amount calculated at the rate of 0.6% of the basic fare in the case of domestic bookings, and
- (ii) at the rate of 1.2% of the basic fare in the case of international bookings, of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax at the rate of specified service tax. The option once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

5.5.12 Special provision for payment of service tax in case of insurer carrying on life insurance business: Sub-rule (7A) of rule 6 provides that an insurer carrying on life insurance business liable for paying the service tax shall have the option to pay an amount calculated @ 1% of the gross amount of premium charged by such insurer towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act.

However such option shall not be available in cases where:

- (a) the entire premium paid by the policy holder is only towards risk cover in life insurance; or
- (b) the part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder.

5.5.13 Special provision for payment of service tax in case of sale/purchase of foreign currency including money changing: Sub-rule (7B) of rule 6 provides that the person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in section 65(105)(zm) and section 65(105)(zzk) as amended shall have the option to pay an amount calculated at the rate of 0.25% of the gross amount of currency exchanged

5.12 Service tax & VAT

towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act.

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

Illustration

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

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

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

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

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

Transaction value = Rs.4000 (40 x 100)

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

5.6 WORKS CONTRACT (COMPOSITION SCHEME FOR PAYMENT OF SERVICE TAX) RULES, 2007

Notification No. 32/2007 ST dated 22.05.2007 has notified Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. These rules have come into effect from 01.06.2007.

Rule 2 contains the following definitions:

- (a) "Act" means the Finance Act, 1994;
- (b) "section" means the section of the Act;
- (c) "works contract service" means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;
- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

Sub-rule (1) of rule 3 lays down that notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to 4% of the gross amount charged for the works contract.

The gross amount charged for the works contract shall be the sum,-

(a) *including-*

- (i) *the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and*
- (ii) *the value of all the services that are required to be provided for the execution of the works contract;*

(b) *excluding-*

- (i) *the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and*
- (ii) *the cost of machinery and tools used in the execution of the said works contract except for the charges for obtaining them on hire:*

However, this condition would not apply to a works contract, where the execution under the said contract has commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before the 07.07.2009.

Sub-rule (2) of rule 3 provides that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

Sub-rule (3) of rule 3 provides that the provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

Sub rule (4) of rule 3 provides that the option under sub-rule (3) shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.

5.7 LARGE TAX PAYER

The concept of large taxpayer has also been incorporated in the service tax provisions. (The concept of large tax payer has been discussed in detail in Chapter 5 of Section A of this Study Material). In rule 2 of the Service Tax Rules, 1994, after sub-rule (ccc), sub-rule (cccc) has been inserted which defines "large tax payer" to have the meaning assigned to it in the Central Excise Rules, 2002.

Rule 10 has been inserted in the Service Tax Rules, 1994 which lays down the procedure and facilities for the large taxpayer. The provisions of this rule are discussed below:

Notwithstanding anything contained in these rules, the following shall apply to a large

5.14 Service tax & VAT

taxpayer,-

- (1) A large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises. A large taxpayer who has obtained a centralized registration under rule 4(2) shall submit a consolidated return for all such premises.
- (2) A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.
- (3) A large taxpayer may, with intimation of at least 30 days in advance, opt out to be a large taxpayer from the first day of the following financial year.
- (4) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise Officers of the said unit.
- (5) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large.

5.8 RETURNS [SECTION 70, RULE 7, RULE 7B & RULE 7C OF SERVICE TAX RULES, 1994]

Section 70(1) *inter alia* provides that every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

Section 70(2) provides that the person or class of persons notified under sub-section (2) of section 69 shall furnish to the Superintendent of the Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

5.8.1 Manner of filing return: Half yearly returns have to be filed in Form 'ST-3' or 'ST-3A' as the case may be indicating *inter alia*, monthwise:

- (i) the value of taxable services charged/billed;
- (ii) the value of taxable service realised;
- (iii) the amount of Service Tax payable/paid etc.

The said Form ST-3 has to be filed in triplicate along with a copy of the Form TR-6 challans for the months/quarters covered in the half-yearly return. Where the assessment is provisional, the half-yearly return in Form ST-3 is required to be accompanied by the return in Form ST-3A (Rule 7).

Single return for multiple service providers: For an assessee who provides more than one taxable service, only a single return will be sufficient. However, the details in each of the

Service Tax Procedures 5.15

columns of the Forms ST-3 have to be furnished separately for each of the taxable service rendered by him.

Nil return: A 'Nil' return (i.e. where no taxes are required to be paid) also has to be filed.

5.8.2 Due date for filing return: Returns have to be filed on half yearly basis by the 25th of the month following the particular half year. The due dates for filing the returns are given in **point 5.32**. If the 25th of the month is a public holiday, the service tax returns are to be filed on next working day immediately following the holiday.

5.8.3 Delayed return: A delayed return can also be furnished by paying the prescribed late fee. Section 70(1) inter alia provides for filing of periodical return after the due date with the prescribed late fee of not more than Rs.2,000.

5.8.4 Late fee for delayed return [Rule 7C]: The prescribed late fee for furnishing a delayed return is given in the following table:

S. No.	Period of delay	Late fee
(a)	15 days from the date prescribed for submission of the return	Rs.500
(b)	Beyond 15 days but not later than 30 days from the date prescribed for submission of the return	Rs.1,000
(c)	Beyond 30 days from the date prescribed for submission of the return	An amount of Rs.1,000 plus Rs.100 for every day from the 31 st day till the date of furnishing the said return

However, the total late fee for delayed submission of return shall not exceed Rs.2,000. Further, where the assessee has paid the prescribed late fee for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.

Late fee may be reduced/waived where service tax payable is nil: Where the gross amount of service tax payable is nil, the Central Excise Officer may, on being satisfied that there is sufficient reason for not filling the return, reduce or waive the penalty (late fee) [Proviso to rule 7C].

5.8.5 Revised return [Rule 7B]: An assessee can submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of 90 days from the date of submission of the original return. It has been clarified that where an assessee submits a revised return, the 'relevant date' for the purpose of recovery of service tax, if any, under

5.16 Service tax & VAT

section 73 of the Act shall be the date of submission of such revised return.

5.9 SCHEME FOR SUBMISSION OF RETURNS THROUGH SERVICE TAX RETURN PREPARERS [SECTION 71]

The Finance Act, 2008 has inserted a new section 71 to provide for the scheme for submission of returns through service tax returns preparers. Section 71 provides that the Central Board of Excise and Customs (Board) may frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70 and authorise a Service Tax Return Preparer to act as such under the Scheme.

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

“Service Tax Return Preparer” means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section. “Person or class of persons” means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.

The Scheme framed by the Board may provide for the following, namely:—

- (a) the manner in which and the period for which the Service Tax Return Preparer shall be authorised under sub-section (1);
- (b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer;
- (c) the code of conduct for the Service Tax Return Preparer;
- (d) the duties and obligations of the Service Tax Return Preparer;
- (e) the circumstances under which the authorisation given to a Service Tax Return Preparer may be withdrawn;
- (f) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.

5.10 RECORDS AND ACCESS TO REGISTERED PREMISES [RULE 5 & RULE 5A OF SERVICE TAX RULES, 1994]

5.10.1 Nature of records: The nature of records required is given in Rule 5(1) which provides that records (including computerised data) as maintained by an assessee in accordance with various laws in force from time to time shall be acceptable. Thus, the records as required under other laws applicable to an assessee will be the records required for service tax e.g. the Council of the Institute of Chartered Accountants of India vide *Notification No. 1-CA(153)/86 dated 18th August, 1986*, has specified the under-mentioned books to be maintained by a practising chartered accountant:

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- (i) Cash Book,
- (ii) Ledger

Rule 6F of the Income Tax Rules, 1962, prescribes that the person carrying on legal, medical, engineering, or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorised representative or film artist, subject to certain exemptions specified in the proviso to Rule 6F(1), should maintain the following :

- (i) Cash Book,
- (ii) Journal, if accounts are maintained on mercantile system of accounting,
- (iii) Ledger,
- (iv) Carbon copies of bills and receipts,
- (v) Original Bills & Receipts for expenses.

5.10.2 List of accounts: Rule 5(2) lays down that every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-

- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to-
 - (a) providing of any service, whether taxable or exempted;
 - (b) receipt or procurement of input services and payment for such input services;
 - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
 - (d) other activities, such as manufacture and sale of goods, if any.
- (ii) all other financial records maintained by him in the normal course of business.

5.10.3 Minimum time for preserving the records: All records maintained by an assessee shall be preserved at least for a period of 5 years immediately after the financial year to which such records pertain [Rule 5(3)].

5.10.4 Access to registered premises [Rule 5A]: Sub-rule (1) of rule 5A provides that an officer authorised by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

Sub-rule (2) provides that every assessee shall, on demand, make available to the officer authorised under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be,-

5.18 Service tax & VAT

- (i) the records as mentioned in sub-rule (2) of rule 5;
- (ii) trial balance or its equivalent; and
- (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961, for the scrutiny of the officer or audit party, as the case may be

5.10.5 Service tax to be indicated in all the documents: Section 12A of the Central Excise Act has been made applicable to Service Tax which implies that the service tax amount should be prominently indicated in all the documents relating to assessment, sales invoice and other like documents. The words "other like documents" when used in relation to assessment may also encompass receipts issued by the assessee since under the present dispensation service tax is payable on the basis of amounts received.

5.11 ASSESSMENT

Section 70 provides that every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. It is the duty of the assessee to make self-assessment of tax due in respect of services provided by him in a particular period and pay the tax on the basis of self-assessment.

5.11.1 Provisional assessment: Rule 6(4) provides that where an assessee is unable to correctly estimate the actual amounts of service tax payable for any month or quarter, the assessee may make a request in writing to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, to make a provisional payment of tax on the basis of the amount deposited. The Assistant Commissioner or Deputy Commissioner as the case may be, may, on receipt of such request, order provisional assessment of tax. Accordingly, the provisions of Central Excise Rules, 2002 relating to provisional assessment shall apply except the provisions relating to execution of bond.

Rule 6(5) provides that in case an assessee requesting for provisional assessment, the assessee shall submit a memorandum in form ST-3A; giving details of difference between the provisional amount of service tax deposited and the actual amount of service tax payable for each month alongwith the half-yearly return in form ST-3.

Where the assessee submits a memorandum, in Form ST-3A under sub-rule (5), the AC/DC of Central Excise, as the case may be shall complete the assessment, wherever he deems it necessary, after calling such further documents or records, as he may consider necessary and proper in the circumstances of the case.

Rule 6(6) provides that in case the assessee submits a memorandum in Form ST-3A along with the return in Form ST-3 pursuant to a request for provisional assessment, the AC/DC as the case may be, may complete the assessment after calling for such further documents and records as he may consider necessary and proper.

5.11.2 Best judgement assessment [Section 72]: Section 72 empowers the central excise officer to make best judgement assessment. Section 72 lays down that if any person,

liable to pay service tax,—

- (a) fails to furnish the return under section 70;
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

5.12 RECOVERY OF SERVICE TAX NOT LEVIED OR PAID OR SHORT-LEVIED OR SHORT-PAID OR ERRONEOUSLY REFUNDED [SECTION 73]

Section 73 deals with the value of taxable services escaping assessment. The provisions, as explained below, are similar to the provisions of section 11A of Central Excise Act.

(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

However, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the period of “one year” can be extended to “five years”.

For this purpose, where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

(1A) An option is being provided to the person or his agent to whom a notice has been served by the Central Excise Officer for short/non levy or short/non payment or erroneous refund of

5.20 Service tax & VAT

service tax by reason of fraud, collusion, or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of service tax law with an intent to evade payment of service tax.

Such person or his agent may pay service tax in full or in part as may be accepted by him, including the interest payable thereon under section 75 and penalty equal to 25% of the service tax specified in the notice or the service tax so accepted by such person within 30 days of the receipt of the notice.

(2) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served, determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

However, where such person has paid the service tax in full together with interest and penalty, the proceedings in respect of such person and other persons to whom notices have been served under sub-section (1) shall be deemed to have been concluded.

Further, in cases where such person has paid service tax in part along with interest and penalty under sub-section (1A), the Central Excise Officer shall determine the amount of service tax or interest which will not exceed the amount partly due from such person.

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice in respect of the amount so paid.

However, Central Excise Officer may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of "one year" shall be counted from the date of receipt of such information of payment.

It has been clarified that the interest under section 75 shall be payable on the amount paid by the person and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer.

(4) The provisions of payment of service tax on the basis of the ascertainment of the assessee shall not apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or

Service Tax Procedures 5.21

- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.
- (5) Here, relevant date means,—
 - (i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid—
 - (a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
 - (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
 - (c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;
 - (ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;
 - (iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.

Any mistake apparent from the records may be rectified by the Central Excise Officer within two years from the date on which the order was passed. In case the rectification results in increasing the liability of the assessee or reducing a refund he will have to be given a notice and reasonable opportunity of being heard by the Central Excise Officer (Section 74).

5.13 AMOUNT COLLECTED FROM ANY PERSON IN EXCESS OF THE SERVICE TAX LEVIABLE TO BE DEPOSITED WITH THE CENTRAL GOVERNMENT [SECTION 73A]

- (1) If any person, who is liable to pay service tax, has collected any amount in excess of the service tax assessed or determined and paid on any taxable service from the recipient of taxable service in any manner as representing service tax, then he shall forthwith pay the amount so collected to the credit of the Central Government. In other words, this provision prescribes compulsory payment by any person of any amount collected in excess of the service tax leviable but not deposited with the Central Government.
- (2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.
- (3) If any person, who is liable to pay any of the abovementioned amounts [referred to in points (1) and (2) above], does not pay such amount to the credit of the Central Government, a notice shall be served on him by the Central Excise Officer. The notice will require such person to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

5.22 Service tax & VAT

(4) Such person may make a representation to the Central Excise Officer after receiving the notice. The Central Excise Officer shall consider the said representation and then determine the amount due from such person. Such amount will however, not exceed the amount specified in the notice. Thereupon, such person shall pay the amount so determined.

(5) Any of the abovementioned amounts [referred to in points (1), (2) and (4) above] paid to the credit of the Central Government shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in point (1) above.

(6) Where any surplus amount is left after the adjustment (referred to in point (5) above), such amount shall either be credited to the

- (i) Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944 or,
- (ii) refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B of the Central Excise Act. In such cases, the said person may make an application under that section within 6 months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount.

5.14 INTEREST ON AMOUNT COLLECTED IN EXCESS [SECTION 73B]

Section 73B provides for charging interest on the amount (referred to in para 5.11 above) collected in excess of the tax assessed or determined and paid for any taxable service. The provisions of the section are discussed below:

(1) Where an amount has been collected in excess of the tax assessed or determined and paid for any taxable service from the recipient of such service, the person who is liable to pay such amount shall, in addition to the amount, be liable to pay interest.

(2) The interest shall be charged at any rate between 10% and 24% per annum. The exact rate shall be fixed by the Central Government by notification in the Official Gazette. *Notification 8/2006-ST, dated 19.04.2006* has notified the rate of interest chargeable on amounts collected in excess of service tax assessed or determined under this section as 13% per annum.

(3) The interest shall be payable from the first day of the month succeeding the month in which the amount ought to have been paid till the date of payment of such amount.

(4) However, no interest shall be payable where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B, subject to fulfillment of the following conditions:

- (a) the full amount is paid voluntarily within 45 days from the date of issue of such order, instruction or direction; and
- (b) no right to appeal against such payment at any subsequent stage is reserved.

In other cases, the interest shall be payable on the whole amount, including the amount already paid.

(5) Where the amount determined by the Central Excise Officer under section 73A is

reduced or increased by the Commissioner (Appeals), the Appellate Tribunal, or the Court, the interest payable thereon shall be on such reduced or increased amount.

**5.15 PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES
[SECTION 73C]**

(1) During the pendency of any proceeding under section 73 or section 73A, the Central Excise Officer may provisionally attach any property belonging to the person on whom notice is served under sub-section (1) of section 73 or sub-section (3) of section 73A, as the case may be, in the prescribed manner.

(2) Such an attachment shall be done only when the Central Excise officer is of the opinion that the attachment is necessary for the purpose of protecting the interests of revenue. However, a previous approval of the Commissioner of Central Excise, by order in writing, is a prerequisite for such provisional attachment.

(3) Such an attachment can be done for a period of 6 months. This period will commence from the date of the order of the Commissioner of Central Excise permitting such provisional attachment.

(4) However, this period may be extended by the Chief Commissioner of Central Excise by such further period or periods as he thinks fit. The reasons for such an extension shall be recorded in writing. It is to be noted that the total period of extension in any case shall not exceed 2 years.

CBEC has issued certain guidelines for provisional attachment of the property vide Circular No. 103/06/2008 ST dated 01.07.2008. They are similar to the guidelines issued in respect of provisional attachment of property in excise laws [Refer Chapter 8 : Demand, Adjudication and Offences of Part A of this Study Material for the said guidelines].

**5.16 PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES
[SECTION 73D]**

This section provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest. The provisions are discussed below in detail:

(1) The Central Government may cause to be published name of any person and any other particulars relating to any proceedings in respect of such person. Such publication shall be done if the Government is of the opinion that it is necessary or expedient in the public interest to publish the name and any other particulars. The publication shall be done in a prescribed manner.

“Service Tax (Publication of Names) Rules, 2008” have been notified which empower the Central Government to publish in the Official Gazette, print media, electronic media or by any other means, the names and particulars of the (a) persons, who have been adjudged to have contravened any of the provisions of the Chapter or the rules made thereunder, with intent to evade payment of service tax, and (b) persons who have been adjudged to pay but have not

5.24 Service tax & VAT

paid any amount, payable under the provisions of section 73A.

(2) The publication shall be made in relation to any penalty only after the time for presenting an appeal to the Commissioner (Appeals) or the Appellate Tribunal expires without an appeal being presented or the appeal, if presented, gets disposed of.

(3) In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, shall also be published if, in the opinion of the Central Government, circumstances of the case justify it.

5.17 REFUNDS

In the event the assessee has to claim a refund he has to comply with section 11B of the Central Excise Act, 1944 which is made applicable to service tax *vide* section 83 of the Act.

In order to claim refund under section 11B of the Central Excise Act, 1944 the assessee has to prove that the incidence of duty has not passed on to the buyer or to any other person. This restriction known as the bar of 'unjust enrichment', is overriding.

The above bar also applies to service tax. Section 11B(1) of the Central Excise Act, 1944 provides that an application for refund of duty should be made to the AC/DC before the expiry of one year from the relevant date. "Relevant date" has been defined in Explanation (B) to section 11B(1) of Central Excise Act, 1944 and in the context of service tax clause (f) to the said Explanation (B), which defines "relevant date" as the date of payment of duty, shall apply. Thus, the limitation period of one year is to be reckoned from the date of payment of duty/service tax. Thus, summarising, a refund claim must comply with the following conditions:

- (i) It should be in the prescribed form.
- (ii) It should be filed before the expiry of the limitation period of one year from the date of payment of tax.
- (iii) Proof should be adduced that the incidence of tax has not been passed on to any person i.e. tax has been borne by the applicant.

5.17.1 Interest on delayed refund: The provisions of section 11BB of the Central Excise Act are applicable for the purpose of Service Tax which *inter alia* provide that in case the refund is not given within 3 months from the date of receipt of refund application, interest should be paid at such rate, not below 5% and not exceeding 30% per annum as is fixed by the Central Board of Excise and Customs (Board) for the period commencing from the date immediately after the expiry of the said 3 months till the date of refund. The existing rate of interest fixed by the Board is 6% per annum.

5.18 PENAL CONSEQUENCES

Sl. No.	Section	Nature of Default	Consequences of Default
1.	76	Failure to pay service tax	Penalty - Rs.200 for every day during which such failure continues or at the rate of 2% of such tax, per month, whichever is higher. It shall be computed from the first day after the due date till the date of actual payment of the outstanding amount of service tax.
2.	77	Contravention of any provision for which no penalty is provided	Maximum penalty of Rs.5,000/- (refer point 5.18.2)
4.	78	Suppressing value of taxable service	Penalty which shall not be less than, but which shall not exceed twice, the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded.

5.18.1 Penalty for failure to pay service tax [Section 76]: The computation of penalty under section 76 can be understood by the following illustration:

X, an assessee, fails to pay service tax of Rs. 10 lakhs payable by 5th March. X pays the amount on 15th March. The default has continued for 10 days. The penalty payable by X is computed as follows:—

2% of the amount of default for 10 days = $2\% \times 10,00,000 \times 10/31$ = Rs. 6,451.61

Penalty calculated @ Rs. 200 per day for 10 days = Rs. 2,000

Penalty liable to be paid is Rs. 6,452.00.

It may be noted that the total amount of the penalty payable under section 76 shall not exceed the service tax payable.

5.18.2 Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere [Section 77]: (1) Any person,—

- (a) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to Rs.5,000 or Rs.200 for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;
- (b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to Rs.5,000;

5.26 Service tax & VAT

- (c) who fails to—
- (i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or
 - (ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or
 - (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,
shall be liable to a penalty which may extend to Rs.5,000 or Rs.200 for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;
- (d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to Rs.5,000;
- (e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to Rs.5,000.
- (2) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to Rs.5,000.

5.18.3 Penalty for suppressing the value of taxable services [Section 78]: Section 78 provides that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of—

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall not be less than, but which shall not exceed twice, the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded.

However, if the service tax determined under sub-section (1) of section 73 and the interest payable thereon under section 75 are paid within 30 days of the communication of order of the Central Excise Officer determining the service tax the amount of penalty will be reduced to 25% of the service tax, if this reduced penalty is also paid within 30 days. If the service tax

Service Tax Procedures 5.27

determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty shall be available, if the amount of service tax so increased, the interest payable thereon and 25% of the consequential increase of penalty have also been paid within 30 days of communication of the order by which such increase in service tax takes effect.

A point to remember here is that if the penalty is payable under section 78 (penalty for suppressing value of taxable services), the provisions of section 76 (penalty for failure to pay service tax) shall not apply.

Any amount paid to the credit of the Central Government prior to the date of communication of the order shall be adjusted against the total amount due from such person.

5.18.4 Adjudication of penalty: Section 83A provides that where any person is liable to a penalty, such penalty may be adjudged by the Central Excise Officer conferred with such power as the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, may, by notification in the Official Gazette, specify.

The Central Excise Officer specified in column (2) of the Table below are conferred with such powers as specified in the corresponding entry in column (3) of the said Table, for the purposes of adjudging a penalty.

S.No	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under section 83A
(1)	(2)	(3)
1.	Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise	Not exceeding Rs. 5 lakhs
2.	Joint Commissioner of Central Excise	Above Rs. 5 lakhs but not exceeding Rs. 50 lakhs
3.	Additional Commissioner of Central Excise	Above Rs. 20 lakhs but not exceeding Rs. 50 lakhs
4.	Commissioner of Central Excise	Without limit.

However, these provisions shall not apply where a decision or order passed under Chapter V of the Finance Act, 1994 or the rules made thereunder has been referred back to any authority which passed such decision or order, with such directions, for a fresh adjudication or decision, as the case may be.

5.28 Service tax & VAT

5.19 REASONABLE CAUSE [SECTION 80]

Section 80 provides that no penalty under section 76, 77 or 78 shall be imposed if the assessee proves that there is "reasonable cause" for the failure referred to in the said sections. It is mandatory on part of the department to follow the principles of natural justice viz., the audi altarem partem (i.e. hear the other party) rule before imposition of the penalty and provide the assessee an opportunity to prove that there was reasonable cause. [Commissioner of Central Excise, Calcutta – I vs. Suraj Ratan Mohta (1999) 113 E.L.T 260 (Tribunal), Eastern Bench, Calcutta; Ashwani & Associates v. Commissioner of Central Excise, New Delhi (2000) 118 ELT 57 (Tribunal)]

Central Board of Excise & Customs (CBEC) vide Circular No. 97/8/2007 ST dated 23.08.2007 has directed that in respect of demands for an amount upto Rs.1,000 towards short payment/non-payment of service tax, if the service provider, on the default being pointed out, pays the service tax along with interest within a period of one month of the default in payment, the penalty should be waived, taking recourse to the provisions under section 80 of the Act. In other cases, i.e. where amount of service tax involved is over Rs.1,000 penal action prescribed under sections 76, 77 and 79 would be attracted.

5.20 POWER TO SEARCH PREMISES [SECTION 82]

The Commissioner of Central Excise may, if he has reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under the Act, are secreted in any place, may authorise the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise as the case may be, to search for or seize or himself search for or seize such documents or books or things. The search shall be subject to the Code of Criminal Procedure, 1973.

5.21 POWERS OF REVISION [SECTION 84]

Sub-section (1) of section 84 provides that the Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.

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

Sub-section (3) lays down that where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to

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

5.22 APPEALS TO COMMISSIONER OF CENTRAL EXCISE (APPEALS) - FIRST APPEAL [SECTION 85]

An assessee may appeal to the Commissioner of Central Excise (Appeals) if he is aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise.

The appeal shall be in Form ST-4 along with the Statement of Facts and the Grounds of Appeal, all to be filed in duplicate accompanied by a copy of the order appealed against.

The appeal has to be filed within 3 months from the date of receipt of the order of such adjudicating authority. The Commissioner of Central Excise (Appeals) may allow a further period of 3 months if sufficient cause is adduced for the delay.

5.23 APPEALS TO THE APPELLATE TRIBUNAL - SECOND APPEAL [SECTION 86]

5.23.1 Appeal by the assessee: Any assessee who is aggrieved by an order passed by the Commissioner of Central Excise under section 73, or section 83A or any order passed by Commissioner of Central Excise (Appeals) under section 85, may apply to the Appellate Tribunal against such order.

The appeal shall be filed in Form ST-5 along with a Statement of Facts and Grounds of Appeal all to be filed in quadruplicate and accompanied by an equal number of copies of the order appealed against (including one certified copy).

Sub-section (6), of section 86 prescribes the following fee for filing an appeal to the Appellate Tribunal:

Amount of service tax, interest demanded and penalty levied	Fee for filing an appeal
Less than or equal to Rs. 5,00,000	Rs. 1,000.00
More than Rs.5,00,000 but not exceeding Rs.50,00,000	Rs. 5,000.00
More than Rs.50,00,000	Rs.10,000.00

However, no such fee shall be payable in the case of an appeal preferred by Commissioner of Central Excise, or Assistant/Deputy Commissioner of Central Excise. Also, no fee shall be payable in the case of a filing of a memorandum of cross-objections.

Further, sub-section (6A) prescribes a fee of Rs.500 for every application made before the Appellate Tribunal. The application can be an appeal for grant of stay or for rectification of

5.30 Service tax & VAT

mistake or for any other purpose; or for restoration of an appeal or an application. However, no such fee shall be payable in the case of an application filed by the Commissioner of Central Excise or Assistant/Deputy Commissioner of Central Excise.

The appeal shall be filed within 3 months from the date on which the order sought to be appealed against is received by the assessee or within such extended time as may be allowed by the Tribunal.

5.23.2 Appeal by the Department: Section 86(1A) empowers the Board to constitute Committees comprising of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.

Under sub-section (2) of section 86, the Committee of Chief Commissioner of Central Excise may, if it objects to an order passed by the Commissioner of Central Excise under section 73, or section 83A direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

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

Under sub-section (2A) of section 86, the Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any Central Excise Officer to appeal on its behalf to the Appellate Tribunal against the order.

Here also, if the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner. The Chief Commissioner shall direct any Central Excise Officer to appeal to the Appellate Tribunal against such order if it is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper.

It has also been clarified that "jurisdictional Chief Commissioner" means the Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.

The appeal shall be filed in Form ST-7, in quadruplicate, within 3 months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners or the Committee of Commissioners, as the case may be or within such extended time as may be allowed by the Tribunal.

5.23.3 Memorandum of cross-objections: An assessee or the Commissioner of Central Excise or any Central Excise Officer subordinate to him may present a memorandum of cross-objections in Form ST-6, in quadruplicate, to the Appellate Tribunal, within 45 days from the receipt of notice that an appeal against the order of Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred.

5.24 APPEAL TO HIGH COURT AND SUPREME COURT

Appeal may be made to the High Court/Supreme Court in accordance with the provisions of the Central Excise Act which are made applicable to service tax.

5.25 RECOVERY OF ANY AMOUNT DUE TO CENTRAL GOVERNMENT [SECTION 87]

Where any amount payable by a person to the credit of the Central Government under any of the provisions of Chapter V of the Finance Act, 1994 or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below:—

- (a) he may deduct or may require any other Central Excise Officer to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer. Further, he may even require any officer of customs to deduct the amount in default from any money owing to such person which may be under the control of such customs officer.
- (b) (i) he may serve a written notice to
- any other person from whom money is due or may become due to such person, or
 - any other person who holds or may subsequently hold money for or on account of such person
- requiring them to pay the specified money to the credit of the Central Government. The money paid shall be so much as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than the amount due. Such payment should be made either forthwith upon the money becoming due or being held or at or within the time specified in the notice. However, the specified time shall not fall before the money becomes due or is held.
- (ii) every person to whom a notice is issued under this section shall be bound to comply with such notice. Where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for the Central Excise Officer effecting recovery to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made. Any rule, practice or requirement to the contrary shall not have any effect in this respect.
- (iii) if the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice. Thus, all the consequences of this Chapter shall follow.
- (c) he may distrain any movable or immovable property belonging to or under the control of such person and detain the same until the amount payable is paid. However, such

5.32 Service tax & VAT

distrainment shall be made only with the authorisation of the Commissioner of Central Excise and in accordance with the rules made in this behalf.

The said property may be sold by the Central Excise Officer if any part of the said amount payable or of the cost of the distress or keeping of the property remains unpaid for a period of 30 days after such distress. The Central Excise Officer may satisfy the amount payable and the costs including unpaid cost of sale with the proceeds of such sale. The surplus amount, if any, shall be rendered to such person.

- (d) he may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business. The said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

5.26 POWER OF THE CENTRAL GOVERNMENT TO GRANT EXEMPTION FROM SERVICE TAX [SECTION 93]

If the Central Government is satisfied that it is in public interest to do so, it may by notification in the Official Gazette exempt generally or subject to certain conditions specified therein, taxable service of any specified description. Such exemption may be total or partial.

The Central Government may also in public interest exempt by special order in each case, any taxable service from the whole or part of service tax leviable thereon, as it thinks fit. Such special order shall be issued only in exceptional circumstances which are to be specified in the order.

5.27 POWER TO GRANT REBATE [SECTION 93A]

- (1) The Central Government may grant rebate of service tax paid on input services used in the manufacturing or processing of goods and provision of services, which are exported.
- (2) This provision enables the Central Government to prescribe schemes of neutralization of service tax paid on input services used in export goods or services.
- (3) Such rebate shall be subject to such extent and manner as may be prescribed.
- (4) However, where any rebate has been allowed on any goods or services under this section and the sale proceeds in respect of such goods or consideration in respect of such services are not received by or on behalf of the exporter in India within the time allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999, such rebate shall be deemed never to have been allowed.
- (5) Thereupon, the Central Government may recover or adjust the amount of such rebate in such manner as may be prescribed.

5.28 POWER TO MAKE RULES [SECTION 94]

The Central Government has been given the power to make rules which *inter alia* may provide for all or any of the following matters:

- (i) collection and recovery of service tax under section 66 and 68;
- (ii) the determination of amount and value of taxable service under section 67;
- (iii) the time, manner and form in which the application for registration shall be made under section 69(1) and 69(2);
- (iv) the form, manner and frequency of the returns to be furnished under section 70(1) and section 70(2) and the late fee for delayed furnishing of return under section 70(1);
- (v) the manner of furnishing return under section 71A;
- (vi) the manner of provisional attachment of property under sub-section (1) of section 73C;
- (vii) publication of name of any person and particulars relating to any proceeding under sub-section (1) of section 73D;
- (viii) the form in which appeals may be filed under sections 85 and 86(6) and the manner in which they may be verified;
- (ix) the manner in which the memorandum of cross objections under section 86(4) may be verified;
- (x) the credit of service tax paid on the services consumed for providing a taxable service in case where the services consumed and the service provided fall in the same category of taxable service;
- (xi) the credit of service tax paid on the services consumed and duties paid or deemed to have been paid on goods in relation to a taxable service.
- (xii) the manner of recovery of any amount due to the Central Government under section 87;
- (xiii) provisions for determining export of taxable services;
- (xiv) grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;
- (xv) rebate of service tax paid or payable on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India;
- (xvi) rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India under section 93A;

5.34 Service tax & VAT

(xvii) *the date for determination of rate of service tax and the place of provision of taxable service;*

(xviii) any other matter which by this Chapter is to be or may be prescribed.any other matter that may be prescribed.

Every rule, scheme framed under section 71 and every notification issued under section 93 shall be laid before each House of Parliament as soon as possible. It shall be laid for a total period 30 days which may be comprised in one session or two or more successive sessions. If, before the expiry of the session immediately following the session(s) aforesaid, both the Houses agree in making a modification in the rule or notification or both Houses agree that the rule or notification should not be issued, then the rule/ notification shall be issued in such modified form or not be issued at all, as the case may be.

5.29 POWER TO REMOVE DIFFICULTIES [SECTION 95]

Section 95 empowers Central Government to issue orders for removing difficulties, which may arise in respect of implementing or assessing the value of any taxable service incorporated by any of the Finance Acts.

5.30 ADVANCE RULING [SECTIONS 96A TO 96I]

Chapter VA of the Finance Act, 1994 provides for the advance ruling in respect of a question of law or fact regarding the liability to pay service tax in relation to a service proposed, in the specified manner.

(a) Section 96A – Definitions.- In this chapter unless the context otherwise requires,-

(a) **"advance ruling"** means the determination, by the Authority of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a service proposed to be provided, by the applicant.

(b) **"applicant"** means :-

- (i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
- (b) a resident setting up a joint venture in India in collaboration with a non-resident; or
- (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,

who or which, as the case may be, proposes to undertake any business activity in India;

(ii) a joint venture in India; or

(iii) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf,

and which or who, as the case may be, makes application for advance ruling under subsection (1) of section 96C.

Here, "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement.

Thus, in case of a joint venture an applicant for advance ruling can be made only when one of the partners is non-resident.

- (c) **"application"** means an application made to the Authority under sub-section (1) of section 96C.
- (d) **"Authority"** means the Authority for Advance Rulings, constituted under sub-section (1), or authorised by the Central Government under sub-section (2A), of section 28F of the Customs Act, 1962.
- (e) **"non-resident", "Indian company" and "foreign company"** have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961.
- (f) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder shall apply, so far as may be, in relation to service tax as they apply in relation to duty of excise.

(b) Section 96B – Vacancies, etc., not to invalidate proceedings.

No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

(c) Section 96C – Application for advance ruling–

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.
- (2) The question on which the advance ruling is sought shall be in respect of,-
 - (a) classification of any service as a taxable service under Chapter V;
 - (b) the valuation of taxable services for charging service tax;
 - (c) the principles to be adopted for the purposes of determination of value of the taxable services under the provisions of Chapter V;
 - (d) applicability of notifications issued under Chapter V;
 - (e) admissibility of credit of service tax;
 - (f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.

5.36 Service tax & VAT

- (3) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.
- (4) An applicant may withdraw an application within thirty days from the date of the application.

(d) Section 96D – Procedure on receipt of application

- (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records.

However where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Central Excise.

- (2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application.

However, the Authority shall not allow the application where the question raised in the application is-

- (a) already pending in the applicant's case before any Central Excise Officer, the Appellate Tribunal or any Court; or
- (b) the same as in a matter already decided by the Appellate Tribunal or any Court.

However, no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard. Also, where the application is rejected, reasons for such rejection shall be given in the order.

- (3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Central Excise.
- (4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.
- (5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

Explanation.-For the purposes of this sub-section, "authorised representative" has the meaning assigned to it in sub-section (2) of section 35Q of the Central Excise Act, 1944.

- (6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.
- (7) A copy of the advance ruling pronounced by the Authority, duly signed by the

Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Central Excise, as soon as may be, after such pronouncement.

(e) Section 96E – Applicability of advance ruling

- (1) The advance ruling pronounced by the Authority under section 96D shall be binding only-
 - (a) on the applicant who had sought it;
 - (b) in respect of any matter referred to in sub-section (2) of section 96C;
 - (c) on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

(f) Section 96F – Advance ruling to be void in certain circumstances

- (1) Where the Authority finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub-section (4) of section 96D has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Chapter shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.
- (2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Central Excise.

(g) Section 96G – Powers of Authority

- (1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.
- (2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

(h) Section 96H – Procedure of Authority

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

5.38 Service tax & VAT

(i) Section 96I – Power to make rules

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) the form and manner for making application under sub-section (1) of section 96C;
 - (b) the manner of certifying a copy of advanced ruling pronounced by the Authority under sub-section (7) of section 96D;
 - (c) any other matter which, by this Chapter, is to be or may be prescribed.
- (3) Every rule made under this Chapter shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

5.31 APPLICABILITY OF PROVISIONS OF THE CENTRAL EXCISE ACT, 1944 TO SERVICE TAX [SECTION 83]

The following provisions of the Central Excise Act, 1944 are made applicable to service tax *vide* section 83.

Section No.	Title
Section 9C	Presumption of culpable mental state
Section 9D	Relevancy of statements under certain circumstances
Section 11B	Claim for refund of duty.
Section 11BB	Interest on delayed refunds.
Section 11C	Power not to recover duty of excise not levied or short levied as a result of general practice
Section 12	Application of provisions of Act No. 52 of 1962 to Central Excise Duties.
Section 12A	Price of goods to indicate the amount of duty paid thereon.
Section 12B	Presumption that the incidence of duty has been passed on to the buyer.

Section 12C	Consumer Welfare Fund.
Section 12D	Utilisation of the Fund.
Section 12E	Powers of Central Excise Officers.
Section 14	Power to summon persons to give evidence and produce documents in inquiries under this Act.
Section 14AA	Special audit in cases where credit of duty availed or utilised is not within the normal limits, etc.
Section 15	Officers required to assist Central Excise Officers
Section 33A	Adjudication Procedure
Section 35F	Deposit, pending appeal, of duty demanded or penalty levied.
Section 35FF	Interest on delayed refund of amount deposited under the proviso to section 35F
Section 35G	Statement of case to High Court
Section 35H	Application to High Court
Section 35I	Power of High Court or Supreme Court to require statement to be amended
Section 35J	Case before High Court to be heard by not less than two judges
Section 35K	Decision of High Court or Supreme Court on the case stated
Section 35L	Appeal to the Supreme Court
Section 35M	Hearing before Supreme Court
Section 35N	Sums due to be paid notwithstanding reference, etc.
Section 35O	Exclusion of time taken for copy
Section 35Q	Appearance by authorised representative
Section 36	Definitions
Section 36A	Presumptions as to documents in certain cases
Section 36B	Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.
Section 37A	Delegation of powers
Section 37B	Instructions to Central Excise Officers

5.40 Service tax & VAT

Section 37C	Service of decisions, orders, summons, etc.
Section 37D	Rounding off of duty, etc.
Section 38A	Effect of amendments, etc., of rules, notifications or orders
Section 40	Protection of action taken under the Act.

5.32 DUE DATES FOR SERVICE TAX

1. Registration

Within 30 days from the date on which service tax is levied or within 30 days of commencement of business whichever is later.

2. Payment of Service Tax

- (a) Payable by individuals, proprietary concerns and partnership firms:

**Payable on amounts received
during the quarter**

Payable by

	E-payment	Payment otherwise than e-payment
1 st April to 30 th June	6 th July	5 th July
1 st July to 30 th September	6 th October	5 th October
1 st October to 31 st December	6 th January	5 th January
1 st January to 31 st March	31 st March	31 st March

- (b) Payable by persons other than individuals, proprietary concerns and partnership firms:

**Payable on amounts received
during the month**

Payable by

	E-payment	Payment otherwise than e-payment
April	6 th May	5 th May
May	6 th June	5 th June
June	6 th July	5 th July
July	6 th August	5 th August
August	6 th September	5 th September
September	6 th October	5 th October
October	6 th November	5 th November
November	6 th December	5 th December

Service Tax Procedures 5.41

December	6 th January	5 th January
January	6 th February	5 th February
February	6 th March	5 th March
March	31 st March	31 st March

3. Returns

For the half year:		To be filed by:
1 st April	to 30 th Sept.	25 th October
1 st Oct.	to 31 st March	25 th April

5.33 CREDIT OF SERVICE TAX

The provisions relating to credit of service tax are dealt in CENVAT Credit Rules, 2004 which have been discussed in Chapter 4 of Section A of this Study Material.

Self-examination questions

1. Who should apply for registration under service tax law?
2. What is to be done with registration when-
 - (a) A registered assessee transfers his business to another person, or
 - (b) A registered assessee ceases to carry on the activity for which he is registered?
3. Discuss the provisions governing the registration of premises of service providers who have centralized billing or centralized accounting system.
4. What is the relevant date for payment of service tax in case of a company for the month of February and March?
5. Who is responsible to make the payment of service tax in case of service rendered by a goods transport agency?
6. 'A Ltd.' enters in to an advertising contract with 'B Ltd.' for a sum of Rs.15,000.00 on 05.11.2009. A Ltd. receives an advance of Rs.10,000.00 on 06.11.2009 and the balance amount on the completion of services on 12.12.2009. Compute the service tax payable by A Ltd. in the month of December and January.
7. When is the invoice, in respect of provision of service, issued?
8. Which documents are to be submitted along with the first return?
9. When should the return be filed if the due date happens to be a public holiday?
10. Under what circumstances, provisional assessment is resorted to? What is the procedure to be followed for provisional assessment?
11. What are the obligations of the assessee with regard to the records relating to

5.42 Service tax & VAT

service tax?

12. Discuss the provisions in respect of provisional attachment to protect revenue in certain cases.
13. What is the “relevant date” for calculation of limitation period of one year in respect of filing refund claims related to service tax?
14. Under what situations, penalty may be imposed by the department on the assessee?
15. Who can apply for an advance ruling for service tax matters?

