SERVICE TAX ~ I

1. NATURE OF SERVICE TAX

Service tax is a tax on services. This is not a tax on profession, trade, calling or employment but is in respect of service rendered. If there is no service, there is no tax.

As per ***Webster's Concise Dictionary***, 'service' means a useful result or product of labour, which is not a tangible commodity. Thus, basically, service is a value addition that can be perceived but cannot be seen, as it is intangible.

Service is different from sale. The fact that some goods have been used in the course of providing 'service' does not make that transaction a 'sale'. The nature of transaction depends on the intention of the parties. If the parties intended to enter into a transaction of purchase and sale of 'goods', the transaction will be 'sale' even though some services might have been provided. Similarly, in case where goods have been used in providing services or in case where the sale of goods is incidental to the provision of services, the transaction would primarily be that of service.

2. NEED FOR TAXATION OF SERVICES

In any Welfare State, it is the prime responsibility of the Government to fulfill the increasing developmental needs of the country and its people by way of public expenditure. India, being a developing economy, has been trying to fulfill the obligations of a Welfare State with its limited resources. The Government's primary sources of revenue are direct and indirect taxes. Central excise duty on the goods manufactured/produced in India and customs duties on imported goods constitute the two major sources of indirect taxes in India. However, revenue receipts from customs & excise have been declining due to World Trade Commitments and rationalization of commodity duties.

On the other hand, service sector has been growing rapidly all over the world, though it may vary in degree and magnitude among the various countries. The growing importance of this sector can be seen from the ever-increasing contribution made by the service sector to GDP, thereby pushing back the contribution of traditional contributors like agriculture and manufacturing sectors. India is also not an exception to this changed phenomenon. In 2006-07, the service sector accounted for 55.1% of GDP while agriculture accounted for 18.5% and industry 26.4% of GDP. Continued growth in GDP accompanied by higher rate of growth in service sector promises new and wider avenues of taxation to the Government.

In the present day context, services are so widespread and cover almost all activities like management, banking, insurance, hospitality, administration, communication, entertainment, travel, wholesale distribution, retailing, research and development activities, other professional services, etc.

Service sector is now occupying the center stage of the economy so much so that in the contemporary world, development of service sector has become synonymous with the advancement of the economy. Economists believe that with the phenomenal development of the service sector, the exclusion of the service sector from indirect taxation leads not only to the loss of considerable potential revenue, but also creates distortion in the allocation of resources. The distortion arises because the consumer starts making the choice between the consumption of goods and services.

Hence, the Government's argument is that substantial revenue should come from the service sector and the tax on goods (excise duty) should be integrated with the tax on services. If the tax on services reduces the degree of intensity of taxation on manufacturing and trade without forcing the government to compromise on the revenue needs, it will enable better pricing of its products by the manufacturing sector in the global market.

With these objectives in mind, service tax was introduced in India in 1994 and today it is envisaged as the tax of the future.

3. GENESIS (i.e. BEGINNING) OF SERVICE TAX IN INDIA

The levy of service tax can be traced back to recommendations made in early 1990's by the Tax Reforms Committee headed by Professor **Dr. Raja J. Chelliah**.

The Committee recommended imposition of tax on selected services. The Committee emphasized the importance of moving towards full-fledged value added tax for making the system of indirect taxation broadly revenue neutral in relation to production and consumption and widening the tax base by covering exempted commodities. Dr. Raja J. Chelliah had opinion that introduction of value added tax would eliminate cascading and cost escalation effect of indirect taxation. However, the desired objectives would not be achieved to the full extent, unless services were also taxed and the tax on services and tax on goods were integrated to form one general value added tax.

It was envisaged that as the central excise duties on goods would get gradually transformed into a value added tax at the manufacturing level, service tax would get woven into that system.

It was considered that in the Indian context, the taxation of services would lead to widening of the tax base which would make possible a further reduction in the general level of rates of commodity taxes.

Based on the recommendations (though with certain modifications) of the Committee, Dr. Manmohan Singh, the then Union Finance Minister, in his Budget speech for the year 1994-95 introduced the new concept of service tax and stated that "There is no sound reason for exempting services from taxation, when goods are taxed and many countries treat goods and services alike for tax purposes. The Tax Reforms Committee has also recommended imposition of tax on services as a measure for broadening the base of indirect taxes. I, therefore, propose to make a modest effort in this direction by imposing a tax on services of ***telephones, non-life insurance and stock brokers***." Thus, service tax was imposed on 3 services.

Successive Finance Ministers widened the service tax net in their budgets. The modest beginning that was made in the year 1994 by levying tax on three services has reached an ambitious level today. At present, more than 100 services are in the net of service tax. In the years to come, it is expected that all services would be in the service tax net except a few exempted services. Not only the number of taxable services has increased, the rate of service tax, which was 5% in the year 1994, has also increased to 8% in the year 2003, to 10% in the year 2004 and to 12% in 2006. ***However, at present service tax rate has been reduced from 12% to 10% vide Notification No. 8/2009-ST dated February 24, 2009***.

4. CONSTITUTIONAL BACKGROUND/AUTHORITY

The Government derives its power to levy taxes from the Constitution of India. Elaborate provisions have been made in the Constitution of India to regulate the power of taxation of both the Central Government and the State Governments.

Article 265 of the Constitution of India prohibits arbitrary collection of tax. It reads as :

"No tax shall be levied or collected except by authority of law"

Thus the Government may levy a tax on the citizens only under the authority of the Constitution of India. The Constitution, in its Schedule VII, has enumerated the matters on which the Central Government and the State Government can make laws. Such matters are divided into three categories :

a) List – I : Union List :

It contains the matters in respect of which only the Central Government has the power to make laws. Entries 82 to 92C of List I enumerate the subjects where the Central Government has power to levy taxes.

b) <u>List – II : State List</u> :

It contains the matters in respect of which only the State Government has the power to make laws. Entries 45 to 63 of List II enumerate the subjects where the State Governments have power to levy taxes.

c) <u>List – III : Concurrent List</u> :

It contains the matters in respect of which both the Central and the State Governments have power to make laws.

Entry 92C of the Union List of the Seventh Schedule to the Constitution of India enables the Union Government to levy "Taxes on Services". Initially there was no specific entry in the Union List for levying service tax. Service tax was levied by the Central Government by drawing power from entry 97 of the Union List. Entry 97 is a 'residuary entry' in List-I, which has been reproduced below :

"97 - Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

The 'residuary entry' provides wide powers to the Central Government in respect of taxation of the subjects not mentioned in the Lists given by the constitution. However, as a result of deliberations between the States and the Centre and as per the recommendations of the various expert committees, entry 92C was introduced in the Union List vide Constitution (92nd Amendment) Act, 2003 with effect from 07.01.2004. Entry 92C reads as under :

"92C - Taxes on services."

A new Article 268A was inserted in the Constitution which reads as follows :

"268A (1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the State in the manner provided in clause (2).

(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be :

(a) Collected by the Government of India and the States;

(b) Appropriated by the Government of India and the States,

in accordance with such principles of collection and appropriation as may be formulated by the Parliament by law."

A consequential amendment to Article 270 of the Constitution was also made to enable Parliament to formulate by law, principles for determining the modalities of levying the service tax by the Central Government and collection of the proceeds thereof by the Central Government and the State Government. With this amendment in the Constitution, the Central Government has become competent to enact a separate legislation on service tax.

5. DIFFERENT APPROACHES/COVERAGE TO SERVICE TAX

There are two approaches to service tax :

a) **<u>Comprehensive approach</u> :** In comprehensive approach all services are made taxable and a negative list is given in case some services are to be exempted.

b) **<u>Selective approach</u> :** In selective approach, selective services are subjected to service tax.

Depending on the socio-economic compulsions, each country evolved a taxation system on services adopting either a comprehensive approach or a selective approach. While most of the developed countries tax all the services with very few and limited exemptions, most of the developing countries have opted for taxation of select services only.

India has adopted a selective approach to taxation of services. In India, service tax has been levied on specified taxable services and the responsibility of payment of the tax is cast on the service provider (barring few exceptional cases). The service tax is leviable on the gross amount charged by the service provider from the client. System of self-assessment of service tax by the assesse has been introduced. Tax returns are expected to be filed half yearly. Central Board of Excise & Customs (i.e. CBEC) is the central authority to regulate service tax matters.

6. SOURCES/CONTENT/BODY OF SERVICE TAX LAW

Service tax was introduced in 1994 but there is no independent statute on service tax as yet. However, following sources provide statutory provisions relating to service tax and can be broadly grouped under the following categories :

Sources of Service Tax Law

Finance Act | **Rules** | **Notifications** | **Circulars or Office Letters** | **Orders** | **Trade Notices**

a) **Finance Act, 1994 :** The statutory provisions relating to service tax were first promulgated through Chapter V of the Finance Act, 1994. Since then, Chapter V of the Finance Act, 1994 is working as the Act for the service tax provisions. Later, in the year 2003, the Finance Act 2003 inserted Chapter VA relating to advance rulings on service tax in the Finance Act, 1994. In the year 2004, the provisions relating to charging of 'education cess' on the amount of service tax were made applicable through Chapter VI of the Finance (No.2) Act, 2004.

b) **Rules on service tax :** Section 94 of Chapter V and section 96 -I of Chapter VA of the Finance Act, 1994 grants power to the Central Government to make rules for carrying out the provisions of these Chapters. Using these powers, the Central Government has issued following Rules :

(1) Services Tax Rules 1994,

(2) Service Tax (Advance Rulings) Rules, 2003,

(3) CENVAT Credit Rules, 2004,

(4) Export of Service Rules, 2005,

(5) Service Tax (Registration of Special Category of Persons) Rules, 2005,

(6) Service Tax (Determination of Value) Rules, 2006,

(7) Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and

(8) Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007

(9) The Service Tax (Publication of Names) Rules, 2008

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

The aforesaid rules have been amended from time to time. Rules should be read with the statutory provisions contained in the Act. Rules are made for carrying out the provisions of the Act. The rules can never override the Act and cannot be in conflict with the same.

c) **Notifications on service tax :** Sections 93 and 94 of Chapter V, and section 96-I of Chapter VA of the Finance Act, 1994 empower the Central Government to issue notifications to exempt any service from service tax and to make rules to implement service tax provisions. Accordingly, notifications on service tax have been issued by the Central Government from time to time. These notifications usually declare date of enforceability of service tax provisions, provide rules relating to service tax, make amendments therein, provide or withdraw exemptions from service tax or deal with any other matter which the Central Government may think would facilitate the governance of service tax matters.

d) **Circulars or Office Letters (Instructions) on service tax :** The Central Board of Excise and Customs (CBEC) issues departmental circulars or instruction letters from time to time to explain the scope of taxable services and the scheme of service tax administration etc. These circulars/instructions have to be read with the statutory provisions and notifications on service tax. The circulars clarify the provisions of the Act and thus, bring out the real intention of the legislature. However, the provisions of any Act of the Parliament cannot be altered or contradicted or changed by the departmental circulars.

e) **Orders on service tax :** Orders on service tax may be issued either by the CBEC or by the Central Government. Rule 3 of the Service Tax Rules, 1994, empowers the CBEC to appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Finance Act, 1994. Accordingly, orders have been issued by the CBEC, from time to time, to define jurisdiction of Central Excise Officers for the purposes of service tax.

f) **Trade Notices on service tax :** Trade Notices are issued by the Central Excise/Service Tax Commissionerates. These Commissionerates receive various instructions from the Ministry of Finance or Central Board of Excise & Customs for effective implementation and administration of the various provisions of service tax law. The same are circulated among the field officers and the instructions, which pertain to trade, are communicated to them in the form of trade notices. Trade Associations are supplied with the copies of these trade notices. Individual assesses may also apply for copies of trade notices. The trade notice explains the contents of the notifications and circulars/letters/orders, define their jurisdiction; identify the banks in which service tax can be deposited; give clarifications regarding service tax matters, etc.

7. ADMINISTRATION OF SERVICE TAX

Administrative Machinery of Service Tax Law

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Ministry of Finance

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Department of Revenue

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CBEC

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Central Excise Zones
(Headed by Chief Commissioner of Central Excise)

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Central Excise Commissionerates
(Headed by Commissioner of Central Excise)

Director General (Service Tax) Co-ordinator between CBEC and Central Excise Commissionerates

The Department of Revenue of the Ministry of Finance exercises control in respect of matters relating to all the direct and indirect taxes through two statutory Boards, namely, the Central Board of Direct Taxes (CBDT) and the Central Board of Excise and Customs (CBEC). Matters relating to the levy and collection of all the direct taxes (income tax, wealth tax etc.) are looked after by CBDT, whereas those relating to levy and collection of indirect taxes (customs duties, central excise duties etc.) fall within the purview of CBEC. The two Boards were constituted under the Central Board of Revenue Act, 1963.

The responsibility of administration and collection of service tax has also been vested upon the CBEC ('Board'). The Board administers service tax matters through the Central Excise Zones and each Zone, in turn works through Central Excise Commissionerate falling under its territory.

Each zone is headed by a Chief Commissioner of Central Excise, while each Commissionerate is headed by a Commissioner of Central Excise.

The Chief Commissioner of Zone exercises supervision and control over the working of the Commissionerates in the Zone and is mainly responsible for monitoring revenue collection, disposal of pendencies, redressal of grievances of trade, etc. He also ensures coordination among the Commissionerates within the Zone.

Director General (Service Tax)

Considering the increasing workload due to the expanding coverage of service tax, it was decided to centralise all the work and entrust the same to a ***separate unit*** supervised by a very senior official. Accordingly, the office of Director General (Service Tax) was formed in the year 1997. It is headed by the Director General (Service Tax). The functions and powers of Director General (Service Tax) are as follows :

a) To ensure that proper establishment and infrastructure has been created under different Central Excise Commissionerates to monitor the collection and assessment of service tax.

b) To study the staff requirement at field level for proper and effective implementation of service tax.

c) To study as to how the service tax is being implemented in the field and to suggest measures as may be necessary to increase revenue collection or to streamline procedures.

d) To undertake study of law and procedures in relation to service tax with a view to simplify the service tax collection and assessment and make suggestions thereon.

e) To form a database regarding the collection of service tax from the date of its inception in 1994 and to monitor the revenue collection from service tax.

f) To inspect the service tax cells in the Commissionerate to ensure that they are functioning effectively.

g) To undertake any other functions as assigned by the Board from time to time.

The Directorate of Service Tax coordinates between the CBEC and Central Excise Commissionerates. It also monitors the collection and the assessment of service tax. It compiles the service tax revenue reports received from various Central Excise Commissionerates and monitors the performances of the Commissionerates.

It scrutinizes the correspondences received from service providers and replies to the clarifications sought for, wherever possible. In cases where the doubts/clarification sought involves policy matter, the Directorate apprises the Board for issuing clarification/instruction.

8. SERVICE TAX PROCEDURES

Service tax procedures include registration, maintenance of books and records, payment of service tax, availment and utilization of CENVAT credit, filing of service tax returns, self assessment, provisional assessment and recovery of service tax, interest and penalties, rectification of mistakes, revision of assessment order, appeals, search and seizure, advance rulings, refund etc.

9. ROLE OF A CHARTERED ACCOUNTANT

As the scope of service tax is expanding there is a great need for professionals to advice and assist the assessees of service tax. A chartered accountant with his training and experience is well equipped to position himself in the new role as an advisor and facilitator for due compliance of service tax law. The nature of services are :

a) **Advisory services :** With the selective coverage of service tax on certain specified services a great deal of professional knowledge is required to interpret and understand the law and advise the applicability of service tax on an activity or service. A chartered accountant is able to fulfill this need.

b) **Procedural compliance :** The service tax law envisages registration, payment of tax, filing returns and assessments involving interface with the excise department. A chartered accountant with his experience and expertise is the best person to assist the assessee in all the above functions and ensure compliance.

c) **Personal representation:** As per the service tax law read with the Central Excise Act and Rules, a chartered accountant is allowed to appear before the assessment authority, Commissioner (Appeals) (first appeal) and Tribunal (second appeal). Here, too with his experience and expertise a chartered accountant is well positioned to represent his clients.

d) **Certification and audit:** With the widening of tax base there has been a phenomenal growth in the number of service tax assessees. In the ensuing years, the department would have to evolve a mechanism where there is management by exception i.e. generally accept all the returns as correct and pick and choose those returns which need detailed scrutiny. In this mechanism, a chartered accountant could be of great assistance. Service tax returns and financial statements could be certified by the chartered accountant from the perspective of service tax similar to an audit under Section 44AB of the Income-tax Act.

e) **Onerous task to keep pace :** The service tax like excise is administered more by way of trade notices issued by various Commissionerates. A chartered accountant will have to keep himself aware of the latest notifications and trade notices in addition to the changes in law so as to meet the client expectations. Thus, in order to render good value added services in the area of service tax, a chartered accountant has an onerous task to keep pace with the latest in the legal front.

10. CHALLENGES BEFORE THE SERVICE TAX ADMINISTRATION IN INDIA

Although the spread and quantum of service tax levy has shown a tremendous rise over the past fourteen years and there are fair chances of its further rise in the forthcoming years, at administrative front, service tax is still at a nascent stage. Service tax administration in India has to face multi-dimensional challenges. Few of them are related to the very nature and growth of service sector in the economy and others relate to procedural aspects of the service tax collection.

The growth of service sector at higher rate offers opportunities as well as challenges to bring under the tax net, hitherto uncovered services. This offers tremendous revenue potential to the Government. It is expected that in due course service tax would reduce the tax burden on international trade (customs duty) and domestic manufacturing sector (excise duty). So, a planned growth of service tax would be commensurate with the goals of economic liberalization and globalization. This process requires levy of taxes on new services without substantial rise in the rate or cost of collection.

The basic objective of service tax is broadening the tax base, augmentation of revenue and larger participation of citizens in the economic development of the nation. Bringing services under taxation is not simple as the services are intangible and are provided by large groups of organized as well as unorganized service providers including retailers who are scattered across the country. Further, there are several services, which are of intermediate nature. The low level of education of service providers also poses difficulties to both-tax administration and assessees.

The administration of service tax requires a separate comprehensive legislation along with distinct administrative machinery exclusively devoted to the collection of service tax. That alone would bring in greater clarity, streamlined procedures, greater taxpayer assistance and a new tax culture of voluntary compliance. The twin goal of revenue maximization and introduction of the culture of voluntary tax compliance also throw up major challenge before the service tax administration in the country.

11. EXTENT, COMMENCEMENT AND APPLICATION [SECTION 64]

The Finance Act, 1994 came into force from 1.7.1994. By section 64(1), the Act extends to the whole of India except the State of Jammu and Kashmir, and by Section 64(3), the levy applies to "taxable services provided". Thus, services provided in the State of Jammu and Kashmir are not liable to service tax.

As per Article 370 of the Constitution, any Act of Parliament applies to Jammu & Kashmir only with concurrence of State Government. Since, no such concurrence has been obtained in respect of Finance Act, 1994, service tax provisions are not applicable in Jammu and Kashmir.

Service tax will not be payable only if service is provided in Jammu & Kashmir. However, if a person from Jammu & Kashmir provides the service outside Jammu & Kashmir in any other part of India, the service will be liable to service tax, as the location where service is provided is relevant. Merely because the office of the service provider is situated in Jammu & Kashmir, it does not mean that service is provided in Jammu & Kashmir.

Levy of service tax extends to services rendered in designated areas in the continental shelf and exclusive economic zone. The 'exclusive economic zone' extends upto 200 nautical miles inside the sea from base line.

Service provided within the territorial waters will be liable to service tax as levy of service tax extends to whole of India except Jammu and Kashmir and 'India includes territorial waters'. Indian territorial waters extend upto 12 nautical miles from the Indian land mass.

12. CHARGE OF SERVICE TAX ON IMPORT OF SERVICES [SECTION 66A]

Where any taxable service is :

(a) provided or to be provided by a person who :

(i) has established a business or

(ii) has a fixed establishment from which the service is provided or to be provided or

(iii) has his permanent address or usual place of residence,

in a country other than India, and

(b) received by a person (i.e. recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India,

such service shall, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of service tax shall apply accordingly.

Provided that where the recipient of the service is an ***individual*** and such service received by him is ***otherwise than for the purpose of use in any business or commerce***, then, the same shall not be liable to tax under this Section.

TAXABLE SERVICES EXPORTED OUTSIDE INDIA

Export without payment of service tax (Rule 4 of Export of Service Rules, 2005) :

Any taxable service may be exported without payment of service tax.

Rebate of service tax (Rule 5 of Export of Service Rules, 2005) :

Where any taxable service is exported, the Central Government may, by Notification, grant rebate of :

(a) service tax paid on such taxable service or service tax or

(b) duty paid on input services or inputs used in providing such taxable service.

Note :

The Central Government has granted the aforesaid rebates by way of Notification in the Official Gazette and the procedure for claim of such rebates has also been specified. Such rebate is available only if the amount of rebate, in each case, is Rs. 500 or more.

Self-examination questions

1. **Service tax was introduced in India in the year :**

    a) 1994
    b) 1996
    c) 1995
    d) 1991

2. **Which entry of the Union List of the Constitution provides for levy of service tax?**

    a) 92C
    b) 97
    c) 84
    d) None of the above

3. **The provisions relating to service tax are contained in :**

    a) Service tax Act, 1992
    b) Finance Act, 1994
    c) Finance Act, 1992
    d) Income-tax Act, 1961

4. **Which of the following statement is true?**

    a) Rules can override the provisions of the Act.
    b) Only in certain exceptional circumstances rules override the provisions of the Act.
    c) Rules can never override the provisions of the Act.
    d) None of the above

5. **Director General (Service tax) coordinates between ____________ and ____________.**

    a) CBEC and CBDT
    b) Chief Commissioner of Central Excise and Commissioner of Central Excise
    c) Department of Revenue and CBEC
    d) CBEC and Central Excise Commissionerates

6. **Sections ________ and _______ of the Finance Act, 1994 empower the Central Government to make rules.**

    a) 64 and 65
    b) 94 and 96-I
    c) 93 and 94
    d) None of the above

7. **Indian Territorial Waters extend up to __________ nautical miles from the Indian land mass.**

    a) 200
    b) 24
    c) 12
    d) None of the above

8. In which of the following cases service tax will not be attracted?

- **a) A person from Jammu provides service at New Delhi**
- **b) A person having office at Srinagar provides service at New Delhi**
- **c) A person from New Delhi provides service at Jammu**
- **d) All of the above**

9. Which committee recommended the introduction of service tax?

10. Which were the first three services to be brought under the service tax net?

Answers

1. **(a)**
2. **(a)**
3. **(b)**
4. **(c)**
5. **(d)**
6. **(b)**
7. **(c)**
8. **(c)**
9. **Tax Reforms Committee headed by Dr. Raja J. Chelliah**
10. **Telephones, General insurance and Stock-brokers**

S E R V I C E T A X ~ I I

1. CHARGE OF SERVICE TAX [SECTION 66]

Section 66 is the charging Section of the Act which deals with the ***levy and collection*** of service tax. It prescribes the applicable rate of service tax which is to be levied on the value of various ***taxable services***. For collection of service tax, it provides that the 'prescribed manner' needs to be followed. Applicable rate is provided in the Section itself whereas the prescribed manner for collection and payment of tax is provided in the Service Tax Rules, 1994.

With effect from 18.04.2006, the rate of service tax prescribed by Section 66 is ***12%*** of the value of taxable services referred to in Section 65(105) of the Act. ***However, at present service tax rate has been reduced from 12% to 10% vide Notification No. 8/2009-ST dated February 24, 2009***.

Section 65(105) provides that ***taxable service shall not only include service provided but also the "service to be provided".*** Thus :

(a) the charge is on the services provided or ***to be provided***;

(b) the services provided or ***to be provided*** must be the one which is covered in Section 65(105);

(c) the rate of service tax is *10%;*

(d) the measure of tax is on "value of taxable services" provided which is defined in Section 67.

Education Cess : With effect from 10.09.2004, an education cess has been levied @ 2%, calculated on the service tax on all taxable services vide the Finance (No. 2) Act, 2004.

Secondary & Higher Education Cess : With effect from 11.05.2007, a SHEC has been levied @ 1%, calculated on the service tax on all taxable services vide the Finance Act, 2007.

Thus, the effective rate of service tax works out to be 10.3% (*ST @ 10% Plus EC @ 2% Plus SHEC @ 1%*). Service tax, EC and SHEC should be shown separately in the invoice.

Applicability of service tax exemption to Education Cess and Secondary and Higher Education Cess where 'whole of service tax' stands exempted (Circular No. 134/3/2011 ST dt. 8th April, 2011) :

In the case of M/s. Balasore Alloys Ltd. Vs CCE (CESTAT-KOL), it was held that Education Cess and Secondary and Higher Education Cess are leviable and collected even where 'whole of service tax' stands exempted.

Though Tribunal's Order referred above is in favor of revenue, it is inconsistent with the policy intention of the Government to exempt education cess in addition to service tax, where 'whole of service tax' stands exempted. According to Section 95(1) of Finance (No.2) Act, 2004 and section 140(1) of Finance Act, 2007, Education Cess and Secondary and Higher Education Cess are leviable and collected as service tax, and when whole of service tax is exempt, the same applies to education cess as well. Since Education Cess is levied and collected as percentage of service tax, when and wherever service tax is NIL by virtue of exemption, Education Cess would also be NIL.

Explanation to Section 65 (121) :

'Taxable Service' includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration. Hence, the services (falling under any category of taxable service) provided or to be provided by any unincorporated association or body of persons to a member thereof shall be liable to service tax. This provision is an exception to the ***'Principle of Mutuality'***.

2. GENERAL EXEMPTIONS FROM SERVICE TAX FOR ALL SERVICES

Section 93 of the Finance Act, 1994 empowers the Central Government to exempt taxable services either generally or subject to the specified conditions from levy of whole of the service tax or any part thereof. This power is exercised by issuing notifications or special orders.

The following general exemptions from payment of whole of the amount of service tax are available to the service providers :

A. Exemption to all services provided to United Nations or International Organisation *(Notification No. 16/2002 ST, dated 02.08.2002)*

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

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

B. Exemption to services provided to a developer or units of Special Economic Zone (SEZ) *(Notification No. 17/2011 – ST dated 1st March, 2011)*

Through this notification the Central Government has exempted the taxable services specified in Section 65(105), received by a Unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ for the authorized operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

1. Conditions for claiming exemption

The exemption contained in this notification shall be subject to the following conditions, namely :

(a) the exemption shall be provided ***by way of refund*** of service tax paid on the specified services received for the authorised operations in a SEZ. However, where the specified services received and used for authorised operations are ***wholly consumed*** within the SEZ, the provider of such services or the receiver of such services on reverse charge basis, as the case may be, has the option ***not to pay the service tax ab initio.***

(b) for the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;

(c) the Developer or Unit of SEZ ***who does not own or carry out any business other than SEZ operations***, shall furnish a declaration to that effect in **Form A-1**, for the purpose of claiming exemption;

(d) where the specified services received by Unit or Developer, are not ***wholly consumed*** within SEZ, i.e., shared between authorised operations in SEZ Unit and Domestic Tariff Area (DTA) Unit, refund shall be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates, i.e., :

$$\text{Maximum refund} = \frac{\text{Service tax paid on specified services used for SEZ Authorised Operations}}{\text{Total turnover for the period}} \times \text{Export turnover of SEZ Unit}$$

(e) any Developer or Unit of SEZ claiming the exemption shall declare that the specified services on which exemption and/or refund is claimed to have been ***actually used*** for the authorized operations;

(f) the Developer or unit of SEZ claiming the exemption, ***by way of refund*** has actually paid the amount indicated in the invoice/bill, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the Finance Act, 1994;

(g) no CENVAT credit of service tax paid on the specified services used for the authorized operations in a SEZ has been taken under the CENVAT Credit Rules, 2004;

(h) the developer or unit of a SEZ, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed.

2. procedure to be followed for claiming the benefit of the exemption

The following procedure should be adopted for claiming the benefit of the exemption contained in this notification :

(a) the Developer or Unit of a SEZ shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations;

(b) the Developer or Unit of a SEZ who is registered as an assessee under the Central Excise Act, 1944 or the Finance Act, 1994, shall file the claim for refund to the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, in **Form A-2**;

(c) the Developer or Unit of a SEZ who is not registered under Central Excise Act, 1944 or the Finance Act, 1994, shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, in **Form A-3**;

(d) the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the Developer or Unit of SEZ within seven days from the date of receipt of the declaration, in Form A-3;

(e) claim for refund shall be filed, within ***one year from the end of the month in which actual payment of service tax was made*** by such developer or unit to the registered service provider or such extended period as the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, shall permit;

(f) the refund claim shall be accompanied by the following documents, namely :

i) a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee and declaration in Form A-1, if applicable;

ii) invoice/bill issued in the name of the Developer or Unit of a SEZ, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original;

iii) a declaration by the Developer or Unit of SEZ, claiming such exemption, to the effect that :

[A] the specified services on which refund of service tax claimed, has been actually used for the authorized operations in the SEZ ;

[B] proper account of the specified services received and used for the authorised operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;

[C] accounts or documents furnished by the Developer or Unit as proof of payment of service tax claimed as refund, based on the invoice/bill issued by the registered service provider indicating the service tax paid on such specified services, are true and correct in all respects;

(g) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after verifying that :

i) the refund claim is complete in all respects;

ii) the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider,

shall refund the service tax paid on the specified services;

(h) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the Finance Act, 1994 and the rules made there under, as if it is recovery of service tax erroneously refunded;

Notes :

1. ***"Developer"*** means a person engaged in development or operation or maintenance of SEZ.

2. ***"Special Economic Zone"*** is a specifically designed duty free area which is deemed to be foreign territory for the purposes of trade operations and duties and tariffs. Therefore, goods supplied to SEZ from the Domestic Tariff Area (DTA) are treated as deemed exports and goods brought from SEZ to DTA are treated as imported goods. The SEZs envisage a simple and transparent policy and procedure for promotion of exports with minimum paper work.

C. Exemption to goods and materials sold by service provider to recipient of service *(Notification No. 12/2003 ST, dated 20.6.2003)*

With effect from 1.07.2003 so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service has been exempt from the service tax leviable thereon subject to the condition that there is documentary proof specifically indicating the value of the said goods and materials (i.e. the sale of goods is evidenced and the sale value is quantified and shown separately in the invoice).

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

(a) no credit of duty paid on such goods and materials sold, has been taken under the provisions of the CENVAT Credit Rules, 2004; or

(b) where such credit has been taken by the service provider on such goods and materials, such service provider has paid the amount equal to such credit availed before the sale of such goods and materials.

Note :

This exemption is restricted to the value of goods and materials sold by the service provider to the recipient of service i.e. this exemption is available only in respect of 'sale'. If certain goods and materials are consumed for providing taxable service, then value of such goods and materials will not be exempt and will form integral part of value of taxable service. Following illustrations will make this point very clear :

1. A beauty parlour consumes certain cosmetics while providing beauty treatment service and also sells certain cosmetics to the service recipient. Exemption will be available only in respect of the latter, not the former.

2. A photographer consumes 10 reels while shooting photos of his clients. He also sells 5 reels to the client for his future use. Here, he will get exemption only in respect of the 5 reels sold to the client. The value of first 10 reels forms intrinsic part of the provision of service and, thus, the same will form part of the value of taxable service and will not be exempt.

D. Exemption for small service providers

(Notification No.6/2005 ST dated 01.03.2005 as amended by Notification No. 4/2007 ST dated 01.03.2007 and further amended by Notification No. 8/2008 ST dated 01.03.2008)

This exemption was introduced with effect from 01.04.2005. Service tax is fully exempt in respect of the taxable services of aggregate value not exceeding Rs. 4,00,000 (Rs. 8,00,000 from financial year 2007-08 and Rs. 10,00,000 from financial year 2008-09) in current financial year if aggregate value of taxable services provided during the preceding financial year does not exceed Rs. 4,00,000 / Rs. 8,00,000 / Rs. 10,00,000.

The exemption is however, subject to certain conditions. Important conditions to be taken in mind are :

(a) The provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during remaining part of the financial year.

(b) Where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately from each premise or each service.

(c) Where the aggregate value of taxable services provided by a provider from one or more premises exceeds Rs. 4,00,000 / Rs. 8,00,000 / Rs. 10,00,000 in the preceding financial year, there will be no exemption from service tax in the current year.

(d) A provider of taxable service under a trade name or brand name, whether registered or not, of another person, can't avail benefit of this notification.

E. Exemption to services provided by or to the Reserve Bank of India

(Notification No. 22/2006 ST dated 31.05.2006)

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

(i) Taxable services provided or to be provided to any person, by the Reserve Bank of India;

(ii) Taxable services provided or to be provided by any person, to the Reserve bank of India

(iii) Taxable services received in India from outside India by the Reserve bank of India.

F. Services provided to diplomatic missions for their office use

(Notification No. 33/07 ST dated 23.05.2007)

All taxable services provided to foreign diplomatic missions or consular posts in India for their official use are exempt from service tax provided that aforesaid mission or consular post has entitlement certificate issue by the Protocol Division of the Ministry of External Affairs (MEA).

G. Services provided to agent/consular officer of diplomatic missions for their personal use

(Notification No. 34/07 ST dated 23.05.2007)

All taxable services provided to foreign diplomatic mission agent posted in a foreign diplomatic mission or consular officer posted in a consular post in India for their personal use or for the use of their family members are exempt from service tax provided that aforesaid agent or officer has entitlement certificate issue by the Protocol Division of the Ministry of External Affairs (MEA). Such agent or officer should also hold a valid photo-identification-card bearing a unique serial number, issued by the Protocol Division of the Ministry of External Affairs (MEA) or Protocol Department of the State concerned.

H. Exemption to services provided by TBI / STEP

(Notification No. 9/2007 ST dated 01.03.2007)

With effect from 01.04.2007, all taxable services provided or to be provided by Technology Business Incubator (TBI) / Science & Technology Entrepreneurship Parks (STEP) recognized by National Science and Technology Entrepreneurship Board (NSTEBD) of the Department of Science and Technology have been exempted from the whole of service tax leviable thereon. The exemption contained in this notification shall be subject to the following conditions :

(i) The STEP or the TBI, who intends to avail the exemption, shall furnish the requisite information containing the details of the incubator along with the information received from each incubatee to the concerned Assistant / Deputy Commissioner of Central Excise before availing the exemption; and

(ii) The STEP or the TBI shall thereafter furnish the information in the formats mentioned above in the same manner before the 30th day of June of each financial year.

I. Exemption to services provided by an incubatee located within the premises of a Technology Business Incubator / Science & Technology Entrepreneurship Park

(Notification No. 10/2007 ST 01.03.2007)

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

(i) The entrepreneur enters into an agreement with the TBI or the STEP as an incubatee, to enable himself to develop and produce hi-tech and innovative products; and

(ii) The total business turnover of such entrepreneur does not exceed Rs. 50 lakh during the previous financial year.

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

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

J. Exemption to services provided in relation to delivery of contents of a cinema in digitized encrypted form

(Notification No. 12/2007 ST dated 01.03.2007)

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

(i) That the service provided or to be provided is in relation to the delivery of the content of the cinematograph film; and

(ii) That the content of such film, being in digitized form, after its encryption, is transmitted directly to a cinema theatre for exhibition through the use of satellite, microwave or terrestrial communication line and not by any physical means including CD and DVD.

For the purpose of this notification :

a) "Cinematograph Film" means a film certified under Section 5A of the Cinematograph Act, 1952;

b) "Cinema Theatre" means a place which is licensed under Part III of the Cinematograph Act, 1952, or under any other law for time being in force in a state for the exhibition of a cinematograph film.

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

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

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

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

3. EXEMPTION FROM SERVICE TAX FOR SPECIFIC SERVICES

While the exemptions discussed aforesaid (i.e. A to K) are available in respect of all taxable services, there are certain exemptions which are available only in respect of specific services. These are discussed as follows :

I. Exemption to services provided by a person located outside India in relation to booking of accommodation for a customer located outside India in a hotel in India

(Notification No. 14/2008 ST dated 01.03.2008)

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

'Hotel' means a place that provides boarding and lodging facilities to public on commercial basis.

II. Exemption (by way of refund) to specified services received by an exporter and used for export of goods

(Notification No. 17/2009 dated 07.07.2009)

An exporter has to avail multiple services for the export of goods (hereinafter referred to as said goods). This notification has listed 16 services (hereinafter referred to as specified services) in respect of which exemption can be claimed by the exporter. Examples of specified services are general insurance service, port service, transport service, warehousing service etc.

The said notification exempts specified services from the whole of the service tax subject to the submission of documents mentioned in the notification. In order to avail exemption exporter has to follow the following steps :

1. The exemption shall be claimed by the exporter for the specified service received and used by him for export of the said goods.
2. The exemption claimed by the exporter shall be provided ***by way of refund*** of service tax paid.
3. The exporter claiming the exemption has actually paid the service tax on the specified service to its provider.
4. No CENVAT credit of service tax paid has been taken by the exporter under the CENVAT Credit Rules, 2004.
5. If the exporter is registered as an assessee under the Central Excise Act, 1944, shall claim the exemption by filing a claim for refund of service tax paid on specified service to the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of manufacture, registered office or the head office, as the case may be, of such exporter in **Form A-l**.
6. If the exporter is not registered as an assessee under the Central Excise Act, 1944, shall before filing a claim for refund of service tax in Form A-l, file a declaration in **Form A-2** with the AC/DC, having the jurisdiction over the registered office or the head office, as the case may be, of such exporter. The AC/DC, shall, after due verification, allot a service tax code (STC) number to the exporter within seven days from the date of receipt of the said Form A-2.
7. The claim for refund shall be filed within one year from the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation.
8. For each specified taxable service, the exporter shall enclose all the documents mentioned in the notification with the Form A-l.

9. No refund claim shall be allowed if the same is for an amount less than rupees five hundred.
10. Where the exporter is a proprietorship concern or partnership firm, the documents enclosed with the claim shall be certified by the proprietor/any partner and where the exporter is a limited company, the documents enclosed with the claim shall be certified by the person authorised by the Board of Directors;
11. The documents enclosed with the claim shall contain a certificate from the exporter or the authorised person to the effect that specified service, to which the document pertains, has been received, the service tax payable thereon has been paid and the specified service has been used for export of goods.
12. Where the amount of refund sought under a claim is more than 0.25% of the declared FOB (free on board) value of export, such certification, shall be done by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of the Companies Act, 1956 or the Income Tax Act, 1961, as the case may be.

Refund of service tax by Assistant Commissioner/Deputy Commissioner of Central Excise :

The AC/DC, as the case may be, shall, after satisfying himself :

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

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

(c) about the arithmetical accuracy of the claim,

shall refund the service tax paid on the specified service within a period of one month from the receipt of said claim.

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

Recovery of service tax erroneously refunded :

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

III. Services in relation to *'transport of goods by road'* and *'commission paid to foreign agents'* availed by an exporter (*Notification No. 18/2009 – ST dated 07.07.2009*)

Services in relation to *'transport of goods by road'* and *'commission paid to foreign agents'* availed by an exporter is exempted from service tax subject to certain conditions :

1. The exemption shall be available to an exporter who :

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

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

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

   (d) is registered under Section 69 of the Finance Act, 1994 (i.e. a registered service provider);

(e) is liable to pay service tax under Rule 2(1)(d) of the Service Tax Rules, 1994 as importer of service or pays or is liable to pay freight either himself or through his agent for the transportation of goods by road in a goods carriage.

2. The invoice, bill or challan, or any other document issued by the service provider to the exporter, on which the exporter intend to avail exemption, shall be issued in the name of the exporter, showing that the exporter is liable to pay the service tax.

3. The exporter availing the exemption shall file the return in **Form EXP2** every six months of the financial year, within fifteen days of the completion of the said six months.

4. The exporter shall submit with the half yearly return, after certification, the documents (i.e. the invoice, bill or challan, or any other document issued by the service provider to the exporter) in original.

5. The documents enclosed with the return shall contain a certification from the exporter or the authorised person, to the effect that taxable service to which the document pertains, has been received and used for export of goods.

6. Where the exporter is a proprietorship concern or partnership firm, the documents enclosed with the return shall be certified by the proprietor/any partner and where the exporter is a limited company, the documents enclosed with the return shall be certified by the person authorised by the Board of Directors;

7. Where the amount of service tax in respect of *'commission paid to foreign agents'* exceeds one per cent of the FOB (free on board) value of the export then, the amount in excess of the said one per cent shall be paid within the period specified under Rule 6 of the Service Tax Rules, 1994 (i.e. Due date for payment of service tax).

Self-examination questions

1. The value of a taxable service is Rs. 10,000. Service tax payable on it is :

   a) Rs. 1,224
   b) Rs. 1,200
   c) Rs. 1,236
   d) Rs. 1,030

2. The charge of service tax is on the :

   a) service provided
   b) service provided or to be provided
   c) service to be provided
   d) none of the above

3. All the taxable services specified in Section 65 of the Act provided by any person to certain organisations are exempt from whole of the service tax. The said organisations are :

   a) only the United Nations
   b) only an International Organisation
   c) the United Nations or an International Organisation
   d) none of the above

Answers

1. (d)
2. (b)
3. (c)

S E R V I C E T A X ~ I I I

1. NEED FOR CLASSIFICATION OF SERVICES

For the purpose of charge of service tax, services are to be classified under different categories of 'taxable service'. Generally, exemptions from service tax are provided in respect of specific category of taxable service. In that case, the exemption will apply only if the service gets classified under that 'taxable service' to which the exemption pertains. Wrong classification may lead to wrong availment of exemption, thereby, giving rise to demand, interest and penalty.

2. PRINCIPLES OF CLASSIFICATION

As per section 65A, when a taxable service is *prima facie* classifiable under one category of service, it shall be so classified. However, where a taxable service is prima facie classifiable under two or more categories of service, then, classification shall be done as follows :

(a) It shall be classified under the category which provides the most specific description;

(b) In case the service is a composite service consisting of a combination of different services which cannot be classified in the manner specified in (a) above, then such service shall be classified under that category which gives them essential character;

(c) When a service cannot be classified in the manner specified in (a) or (b) above, then it shall be classified under the category, which occurs first in Section 65 (105).

Illustration :

Suppose a hotel rents out a conference room for official conference where lunch is also served. In such a case the said service prima facie seems to be classifiable both under the category of 'Mandap Keeper' and 'Convention' service. As per clause (a) of Section 65A, the service shall be classified under the category which provides the most specific description. Services of 'Mandap Keeper' includes official, social as well as business functions while 'Convention' service covers formal functions like conferences only. Hence, in the said case the service provided by the hotel shall be classifiable under the category of 'Convention' service, which provides the most specific description.

3. VALUATION OF TAXABLE SERVICES FOR CHARGING SERVICE TAX

As per Section 66, service tax is to be charged @ 10% of the ***value of taxable service*** provided or to be provided. Hence, we have to determine the value of such taxable services so as to pay service tax.

As per Section 67, the valuation of taxable service shall be determined as under :

Situation	Valuation
1. If the consideration for a taxable service is in terms of money.	The value of such service shall be the gross amount charged by the service provider for such service provided or to be provided by him. Example : If a chartered accountant charges Rs. 10,000 as audit fee from his client, the value of taxable service rendered by the chartered accountant will be Rs. 10,000 and service tax shall be payable on this amount.

2. If the consideration for a taxable service is not wholly or partly in terms of money.	The value of such service shall be equivalent to the total value of monetary as well as non-monetary consideration. However, the total consideration (i.e. monetary as well as non-monetary) has to be treated as inclusive the service tax payable thereon. Example : Mr. X, a company secretary issues a Secretarial compliance Certificate to one of his clients and charges Rs. 8,000 from his client and also asks him to give a wrist watch worth Rs. 5,000. The total consideration in this case will be Rs. 13,000 and the value of taxable service shall be Rs. 11,786 (13,000 x 100 / 110.3) and Rs. 1,214 shall be the service tax payable.
3. Where the provision of service is for a consideration which is not ascertainable	The amount as may be determined in the prescribed manner. ***Section 67(1)(iii) and Service Tax (Determination of Value) Rules, 2006 (as inserted w.e.f 19.04.2006) make provisions for valuation when consideration is not ascertainable.***

Notes :

1. ***"Money"*** includes any currency, cheque, promissory note, letter of credit, draft, pay order, travelers' cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value.

2. ***"Consideration"*** also includes any amount which is payable for the taxable service provided or to be provided. Thus an advance received for providing any taxable service shall also form part of the consideration.

   Example : Mr. A, an architect receives an advance of Rs. 1,000 for providing architectural services. He gets Rs. 6,000 on completion of provision of services. The consideration in this case would be Rs. 7,000, i.e. it would include the amount that is payable for the taxable service to be provided and taxable service provided.

3. Gross amount charged for the taxable services shall include any amount received towards the taxable service before, during, or after the provisions of such services. Thus, not even advance but any other amount recovered after the completion of provision of service shall form part of the gross amount charged for taxable service.

   Example : ABC Co., a security service agency receives Rs. 10,000 as advance while signing a contract for providing taxable service. It receives Rs. 50,000 while providing the service and another Rs. 20,000 after completion of service. Thus, value of taxable service shall be Rs. 80,000 and the service tax shall be payable on it.

4. Where the gross amount charged by a service provider, for the taxable service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable is equal to the gross amount charged.

   Example : Mr. B, a management consultant charges a lump sum amount of Rs. 10,000 as professional fee for rendering taxable services (i.e. he does not charge service tax separately). The value of taxable service in this case would not be Rs. 10,000 but Rs. 9,066 (10,000 x 100 / 110.3) and Rs. 934 shall be the service tax payable.

5. Service tax is payable on the gross amount and not on the net amount. It is not possible for the assessee to deduct expenses from the gross taxable amount. For example, in case of air travel agents, discounts passed on to the customers cannot be reduced from the taxable service.

6. It is not necessary that the recipient of service should pay the consideration only to the service provider. If the recipient of service has paid any sum of money to a third party on behalf of the service provider, such amount shall also be includible in computing the value of taxable service.

7. As per **FAQs on Service Tax** issued by CBEC dated 21-12-2007, where the customer or a client pays only the value of the service amount, but not the service tax amount mentioned in the bill, in that case, the amount so received is to be regarded as ***gross amount inclusive of service tax***. However if such customer or client pays full billed amount later, the differential service tax must be paid forthwith.

4. SALE VALUE OF GOODS TO BE EXCLUDED

There may be situations wherein the service provider may also sell certain goods (whether directly as a sale or indirectly as in works contract). If the service provider supplies goods and material while providing the service, value of goods and material has to be excluded for the purpose of payment of service tax. However, this exclusion is allowable only if sale of such goods is evidenced and sale value is quantified and shown separately in the invoice.

However, it should also be taken into mind that in certain cases, supply of goods is integral to the rendering of services. The sale consideration for such supply of goods cannot be dissected from the service element and the same shall be exposed to liability of service tax. For example, material consumed by a beauty parlour in the rendering of service. Similarly in case of commercial training and coaching institutes, deduction will not be available for any study material or written text provided by the institute.

5. REIMBURSEMENT OF EXPENSES TO BE EXCLUDED IN CERTAIN CASES

In many cases, service providers incur various expenses or costs during the course of providing the services and normally they claim reimbursement from the customers or clients. This is especially the case with services such as that of Consulting Engineers, Manpower Recruitment Agency etc.

As per Rule 5 of the Service Tax (Determination of Value) Rules, 2006, where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for charging service tax on that service.

However, the expenditure or costs incurred by the service provider as a ***Pure Agent*** of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied :

1. The service provider acts as a pure agent of the recipient of service when he makes payment to the third party for the goods or services procured;

2. The recipient of service receives and uses the goods or services so procured by the service provider;

3. The recipient of service is liable to make payment to the third party;

4. The recipient of service authorizes the service provider to make payment on his behalf;

5. The payment made by the provider of service on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

6. The service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

7. The goods and services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Pure Agent :

"Pure Agent" means a person who :

a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable services;

b) neither intends to hold nor holds any title to the goods or services so procured as pure agent of the recipient of service;

c) does not use such goods or services so procured; and

d) receives only the actual amount incurred to procure such goods or services.

Self-examination questions

1. **Which Section governs the valuation of taxable services?**

    a) **Section 65 of the Finance Act, 1994**

    b) **Section 67 of the Service Tax Act, 1994**

    c) **Section 67 of the Finance Act, 1994**

    d) **none of the above**

2. **Money for the purpose of valuation of taxable service includes :**

    a) **promissory note**

    b) **cheque**

    c) **postal remittance**

    d) **all of the above**

3. **Gross amount charged for the taxable service includes :**

    a) **only the amount received before the provision of taxable service**

    b) **any amount received before, during or after the provision of taxable service**

    c) **only the amount received during the provision of taxable service**

    d) **only the amount received after the provision of taxable service**

Answers

1. **(c)**
2. **(d)**
3. **(b)**

SERVICE TAX ~ IV

1. PERSON LIABLE TO PAY SERVICE TAX

Section 68 of the Finance Act, 1994 is the principal Section which fixes responsibility to pay service tax. The powers to decide time and manner of payment of service tax have been granted to the Central Government vide Rule 6 of the Service Tax Rules, 1994.

As per Section 68, 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.

The rate of service tax specified in Section 66 is 12%. ***However, at present service tax rate has been reduced from 12% to 10% vide Notification No. 8/2009-ST dated February 24, 2009***. The period and the manner is prescribed in Rule 6 of the Service Tax Rules, 1994. 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. 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 to pay service tax. The above mentioned principle can be understood by the following diagram :

Person liable to pay service tax

- **Service Provider**
- **Specified persons as per Rule 2(1)(d) of Service Tax Rules, 1994**

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 :

Services	Person liable to pay service tax
(i) Telecommunication Service.	**(i)** The Director General of Post & Telegraph, Chairman of MTNL, any person who has granted a licence by the Government under Indian Telegraph Act.
(ii) General insurance business.	**(ii)** Insurer or re-insurer, as the case may be.
(iii) Insurance auxiliary service provided by an insurance (General and/or life) agent.	**(iii)** Person carrying on general insurance business or the life insurance business as the case may be (i.e. insurance agent is not liable to register and pay tax).
(iv) Any taxable service provided or to be provided by any person from a country other than India and received by any person in India.	**(iv)** The recipient of such service.
(v) Taxable service provided by a goods transport agency, where the consignor or	**(v)** Any person who pays or is liable to pay freight either himself or through his agent

	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.		for the transportation of such goods by road in a goods carriage.
(vi)	Distribution of mutual fund by a mutual fund distributor or an agent.	**(vi)**	Mutual Fund Company receiving such service.
(vii)	Sponsorship service provided to any body corporate or firm.	**(vii)**	Body corporate or firm, as the case may be, who receives such sponsorship service.

2. 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.

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 (Input services are services which are used by a service provider for providing the output service). 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.

3. PAYMENT OF SERVICE TAX ONLY ON RECEIPT

It is to be noted that though the service provider charges service tax in his bill raised on his client as and when the service is provided, the service tax is payable to the Government only when the value of taxable services is ***'received'***. Thus, if a chartered accountant raises a bill for auditing services say, on 15th December, 2010 for Rs. 1,10,300/- (including service tax of Rs. 10,300/-) and the client pays his bill only in February 2011, the liability to pay service tax to the Government would arise only in February 2011.

This alleviates the major grievance of the service providers who otherwise would be required to pay service tax on amounts not received or not likely to be received.

Thus, ***situs*** of taxation is on service provided but the payment of service tax to the Government is deferred till the receipt of the value of the taxable service.

4. SERVICE TAX NOT PAYABLE ON FREE SERVICES

Section 67(1)(iii) and Service Tax (Determination of Value) Rules, 2006 (as inserted w.e.f 19.04.2006) make provisions for valuation even when consideration is not ascertainable.

However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, Section 67(1)(iii) and Service Tax (Determination of Value) Rules, 2006 cannot apply.

Thus, no service tax is payable when value of service is zero as the charging Section 66 provides that service tax is chargeable on the value of taxable service. Hence, if the value is zero the tax will also be zero even though the service may be taxable. However, this principle applies only when there is really a 'free service' and not when its cost is recovered through different means.

5. SERVICE TAX LIABLE TO BE PAID EVEN IF NOT COLLECTED FROM THE CLIENT

Section 68 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per Rule 2(1)(d). The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver.

However, sometimes it may happen that the assessee is not able to charge service tax because of the nature of service or he fails to recover the service tax from the client/customer as he is not aware that his services are taxable. Hence, in these cases the amount recovered from the client in lieu of having rendered the service will be taken to be inclusive of service tax and accordingly tax payable will be calculated by making back calculations. For example, if bill amount is Rs. 7,000 and service tax is not shown separately in invoice, then service tax payable shall be computed as follows :

Rs. 7,000/110.3 x 10.3 = Rs. 654/-

It may be noted that service tax payable is not Rs. 721 computed by applying 10.3% to Rs. 7,000. The value of the taxable service in this case is Rs. 6,346.

The example given above can be solved by using the following formulae :

Value of taxable service = [Gross amount charged / (100 + Rate of tax)] x 100

Service tax = [Gross amount charged / (100 + Rate of tax)] x Rate of tax

6. SERVICES PERFORMED PRIOR TO THE DATE OF LEVY NOT LIABLE FOR PAYMENT OF SERVICE TAX

No service tax is 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.

For instance, no service tax shall be payable in case of newly introduced **Legal Consultancy Service** which is rendered prior to 01.09.2009 even if payment is received by the service provider on or after 01.09.2009. (Legal Consultancy Service has become effective from 01.09.2009).

7. SERVICE TAX PAYABLE ON ADVANCE RECEIVED

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

a) the taxable service includes "service to be provided", and

b) the payments received before, during, or after the provision of taxable service, form part of the gross amount charged for the taxable services.

For example, a security agency takes a contract to provide security services to a client for the month of October for a consideration of Rs. 50,000. It receives an advance of Rs. 25,000 from the client in the month of September. In this case service tax shall be payable by the security agency on the amount of Rs. 25,000 received as an advance even though the service has not been provided at that time.

When advance payment is received for a service which is non-taxable at the time of receipt of payment but becomes taxable during the course of provision of service, such payments would have to be apportioned appropriately between the two periods and that part of service provided on or after the service becomes taxable service, is only liable for service tax.

When payment is received in advance for services to be provided but subsequently the services are not actually provided, then in such cases service tax paid is liable to be refunded.

8. SERVICE TAX COLLECTED FROM THE RECIPIENT OF SERVICE MUST BE PAID TO THE CENTRAL GOVERNMENT [SECTION 73A]

Every person, who is liable to pay service tax and has collected any amount in excess of the service tax assessed or determined, must pay the amount so collected immediately to the credit of the Central Government. This provision ensures that the service provider does not collect excess amount from the recipient of the service in the name of service tax.

Further, 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 should also immediately pay the amount so collected to the credit of the Central Government.

9. INTEREST ON AMOUNT COLLECTED IN EXCESS [SECTION 73B]

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. The interest shall also be payable by the person who has collected any amount, which is not required to be collected as service tax.

The interest shall be payable at such rate not below 10% and not exceeding 24% per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette (at present the rate fixed by Central Government is 13%) from the first day of the month succeeding the month in which the amount should have been paid till the date of payment of such amount. Where such amount is reduced or increased in appeal, the interest payable thereon shall be on such reduced or increased amount.

10. DUE DATE FOR PAYMENT OF SERVICE TAX [RULE 6]

The service tax shall be paid to the credit of the Central Government :

- **where the assessee is an individual or proprietary firm or partnership firm** :

    a) by the 6th day of the month, if the tax is deposited electronically through internet banking; and

    b) by the 5th day of the month, in any other case immediately following the ***quarter*** in which the payments are received, towards the value of taxable services

- **where the assessee is any other person :**

  a) by the 6th day of the month, if the tax is deposited electronically through internet banking; and

  b) by the 5th day of the month, in any other case

  immediately following the ***calendar month*** in which the payments are received, towards the value of taxable services.

Provided that 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.

The due dates for payment of service tax in case of different assessees are tabulated below :

Individuals, proprietary concerns and partnership firms		
Quarters	**Due dates**	
	If tax is deposited through internet banking	**If tax is deposited by any other mode (i.e. by cash or cheque etc.)**
1st April to 30th June	6th July	5th July
1st July to 30th September	6th October	5th October
1st October to 31st December	6th January	5th January
1st January to 31st March	31st March	31st March

Persons other than individuals, proprietary concerns and partnership firms		
Quarters	**Due dates**	
	If tax is deposited through internet banking	**If tax is deposited by any other mode (i.e. by cash or cheque etc.)**
April	6th May	5th May
May	6th June	5th June
June	6th July	5th July
July	6th August	5th August
August	6th September	5th September
September	6th October	5th October
October	6th November	5th November
November	6th December	5th December
December	6th January	5th January
January	6th February	5th February
February	6th March	5th March
March	31st March	31st March

11. 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.

Here, "Associated Enterprise" has the meaning assigned to it in Section 92A of the Income tax Act, 1961.

Section 92A of the Income tax Act, 1961 :

Two enterprises shall be deemed to be associated enterprises if, at any time during the previous year :

a) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or

b) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or

c) a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or

d) one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or

e) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or

f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or

g) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

h) ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or

i) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or

j) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or

k) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or

l) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or

m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

12. 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 and secondary and higher 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.

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.

13. E-PAYMENT OF SERVICE TAX [PROVISO TO RULE 6(2)]

Where an assessee has paid a total service tax of rupees ten lakh or more ***including the amount paid by utilisation of CENVAT credit***, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking.

Some banks provide the facility of e-payment of excise duty and service tax. It is known as Electronic Accounting System in Central Excise & Service Tax (EASIEST). In case of e-payment GAR-7 challan is used instead of TR-6 challan.

14. ADVANCE PAYMENT OF SERVICE TAX

The assessee has been provided with a facility to make advance payment of service tax 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 :

a) 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

b) indicates the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under Section 70.

15. POINTS TO BE REMEMBERED WHILE PAYING SERVICE TAX

The following important points should be kept in mind while paying service tax :

1. Service tax is to be paid on the value of taxable services which is charged by an assessee. Any income tax deducted at source is included in the charged amount. Therefore, service tax is to be paid on the amount of income tax deducted at source also.

2. 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.

3. Payment of service tax into non-designated banks does not amount to payment of service tax.

4. In case the amount of service tax is paid by cheque, the date of presentation of cheque to the bank (designated by Central Board of Excise and Customs) shall be considered as the date of payment, subject to realization of cheque.

5. Payment should be rounded off in multiple of rupee. In other words if the amount of tax payable includes 50 paise or more, it is rounded off to one rupee and less than 50 paise is ignored.

16. ADJUSTMENT OF SERVICE TAX PAID WHEN SERVICE IS NOT PROVIDED EITHER WHOLLY OR PARTIALLY

An assessee may adjust excess payment of service tax against his liability of service tax for subsequent periods. Where an assessee has deposited service tax in respect of a taxable service ***which is not so provided by him either wholly or partially for any reason***, he may adjust the excess service tax so paid by him (calculated on a pro-rata basis) against his service tax liability for the subsequent period.

For example, if the assessee, who is an individual or partnership firm, has paid Rs. 6,000 in excess of service tax liability during the previous half year ending period, the assessee can adjust Rs. 3,000 only per quarter in his subsequent tax liability and not at a stretch. Similarly, if the assessee is a company and has paid Rs. 6,000 in excess of service tax liability during the previous half year ending period, the assessee can adjust Rs. 1000 only per month in his subsequent tax liability and not at a stretch. However, for carrying out such adjustment, the assessee must have refunded the value of taxable service and the service tax thereon to the person from whom it was received.

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.

17. CONDITIONS FOR ADJUSTMENT OF SERVICE TAX PAID

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.

However, such an adjustment is subject to the following conditions :

(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 assessees 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.

18. 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 to local authority in respect of the immovable property is allowed from the gross amount charged for renting of the said immovable property vide Notification No. 24/2007 ST dated 22.05.2007.

However, any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons shall not be treated as property tax for the purposes of deduction from the gross amount charged.

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

Example :

Property tax paid for April to September = Rs. 12,000/-

Rent received for April = Rs. 1,00,000/-

Service tax payable for April = Rs. 98,000/- (1,00,000 – 2,000*) x applicable rate of service tax

*Property tax for the month of April (i.e. Rs. 12,000/6)

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.

19. PROVISIONAL PAYMENT OF SERVICE TAX

In case the assessee is unable to correctly estimate, at the time of the deposit, the actual amount of service tax for any month or quarter, he may make a written request to Assistant/Deputy Commissioner of Central Excise for making payment of service tax on provisional basis. The concerned officer may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him.

For the purpose of provisional assessment at the time of filling the return, the assessee is required to file a statement in Form ST-3A giving detail of difference between service tax deposited and the service tax liable to be paid for each month or quarter. The Assistant/Deputy Commissioner of Central Excise, on the basis of memorandum in form ST-3A may complete the assessment after calling for necessary documents or records, if need be.

20. SPECIAL PROVISION FOR PAYMENT OF SERVICE TAX IN CASE OF AIR TRAVEL AGENT [RULE 6(7)]

The person liable for paying service tax in relation to the services provided by an air travel agent has an ***option*** to pay an amount calculated at the rate of :

a) ***0.6%*** of the basic fare in the case of domestic bookings, and

b) ***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 @ 12% (10% w.e.f 24.02.2009).

The option once exercised applies uniformly in respect of all the bookings of passage for travel by air made by him and cannot be changed during a financial year under any circumstances.

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.

21. SPECIAL PROVISION FOR PAYMENT OF SERVICE TAX IN CASE OF LIFE INSURER CARRYING ON LIFE INSURANCE BUSINESS [RULE 6(7A)]

An insurer carrying on life insurance business who is liable for paying service tax has the option to pay an amount calculated @ 1% of the gross amount of premium charged by him towards the discharge of his service tax liability instead of paying service tax @ 12% (10% w.e.f 24.02.2009).

However, such option is not 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.

22. SPECIAL PROVISION FOR MONEY-CHANGING SERVICES [RULE 6(7B)]

The person liable to pay tax in relation to purchase or sale of foreign currency (i.e. Foreign Exchange Broker/Authorised Dealer in Foreign Exchange/Money Changer) shall have option to pay an amount calculated @ 0.25% of the gross amount of currency exchanged towards discharge of his service tax liability instead of paying service tax @ 12% (10% w.e.f 24.02.2009). However, such option shall not be available in cases where consideration for service provided or to be provided is shown separately in the bill issued by the service provider.

Illustration :

Buying Rate : $ 1 = Rs. 44, Selling Rate : $ 1 = Rs. 46

1. Money Changer exchanged $ 1,000 for equivalent rupees

   Transaction Value = Rs. 44,000 ($ 1,000 x Rs. 44)

   Service Tax Payable = Rs. 110 (0.25% of Rs. 44,000).

2. Money Changer exchanged equivalent rupees for $ 1,000

   Transaction Value = Rs. 46,000 ($ 1,000 x Rs. 46)

   Service Tax Payable = Rs. 115 (0.25% of Rs. 46,000).

23. SPECIAL PROVISION FOR THE DISTRIBUTOR OR SELLING AGENT OF LOTTERY TICKETS [RULE 6(7C)]

Rule 6(7C) has been introduced by Notification No. 49/2010 – ST Dt. the 8th October, 2010.

The distributor or selling agent, liable to pay service tax for the taxable service of promotion, marketing, organising or in any other manner assisting in organising lottery shall have the option to pay service tax as follows (instead of paying service tax @ 10%) :

Service Tax Payable	Condition
Rs 6000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of ***aggregate face value**** of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
Rs 9000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of ***aggregate face value**** of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%

*Provided that in case of **online lottery**, the ***aggregate face value*** of lottery tickets shall be taken as the ***aggregate value of tickets sold.***

Provided further that the distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

Provided also that the distributor or selling agent shall exercise such option for financial year 2010-11, within a period of one month of the publication of this sub-rule in the Official Gazette (i.e. within one month from 8th October, 2010 i.e. upto 7th November, 2010)) or, in the case of new service provider, within one month of providing of service and such option shall not be withdrawn during the remaining part of that financial year.

Notification No. 50/2010 - Service Tax dated 8th October, 2010

This notification exempts the persons marketing the lottery tickets (hereinafter referred to as **'such person'**), other than the distributors or selling agents appointed or authorised by the lottery organising State (hereinafter referred to as **'such distributor or selling agent'**), from the whole of service tax leviable thereon, if the optional composition scheme under Rule 6(7C) is availed of by **such distributor or selling agent**, in respect of such lottery during the financial year.

Provided that if **such person** also markets lottery tickets for distributors or selling agents who have not so opted, then nothing contained in this notification shall apply to the value of service provided to the distributors or selling agents who have not so opted.

24. INTEREST ON DELAYED PAYMENT OF SERVICE TAX [SECTION 75]

In case payment of service tax is made after its due date, interest is leviable on the amount of tax liable to be paid for the period of delay. Payment of interest is mandatory in all circumstances. There is no provision to waive this interest on delayed payment of service tax. Every person who fails to deposit the service tax or any part thereof to the account of Central Government within the prescribed period has to pay 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 notified rate of interest is 13%. For computing the period of delay in payment of service tax, the month is counted from the next day from the date on which the payment of service tax was due. For example, if service tax is payable by 5th of a month, one month period for computation of interest would be from 6th of that month to 5th of the next month. Interest is paid for the period of delay and not for the whole month. For instance, if service tax is payable on May 5, 2010 but is paid on May 15, 2010, the interest is to be paid for 10 days @ 13% p.a.

25. PENALTY FOR FAILURE TO PAY SERVICE TAX [SECTION 76]

Any person, liable to pay service tax, fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of Section 75, a penalty which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two per cent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax. However, the total amount of the penalty payable in terms of this Section shall not exceed the service tax payable.

Illustration : X, an assessee, fails to pay service tax of Rs. 10 lakhs payable by 5th May. X pays the amount on 15th May. The default has continued for 10 days. The penalty payable by X shall be higher of the following :

a) 2% of the amount of default for 10 days = 2% x 10,00,000 x 10/31 = Rs. 6,452

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

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

SERVICE TAX ~ IV

Self-examination questions

1. **Which of the following statement is false?**

   a) **In case of insurance auxiliary service provided by an insurance agent, the person liable to pay service tax is the person carrying on the insurance business in India.**

   b) **In case of business auxiliary service of distribution of mutual fund by a mutual fund distributor, the person liable to pay service tax is the mutual fund or asset management company receiving such service.**

   c) **In case of accounting services rendered by a chartered accountant, the person liable to pay service tax is the chartered accountant.**

   d) **none of the above**

2. **What is the due date for payment of service tax in case of a partnership firm?**

   a) **5th day of the month immediately following every month**

   b) **25th day of the month immediately following every quarter**

   c) **5th day of the month immediately following every quarter**

   d) **25th day of the month immediately following every month**

3. **'A Ltd.' enters in to an advertising contract with 'B Ltd.' for a sum of Rs. 15,000.00 on 05.06.2010. 'A Ltd.' receives an advance of Rs. 10,000.00 on 06.06.2010 and the balance amount on the completion of services on 12.07.2010. The service tax payable by 'A Ltd.' is :**

   a) **Rs. 1545 by 25.08.2010**

   b) **Rs. 1030 by 25.07.2010 and Rs. 515 by 25.08.2010**

   c) **Rs. 1545 by 05.08.2010**

   d) **Rs. 1030 by 05.07.2010 and Rs. 515 by 05.08.2010**

4. **'X Ltd' provides management consultancy service to 'Y' for a consideration of Rs. 20,000. 'X Ltd.' raises the bill on 'Y' on 05.06.2010. 'X Ltd.' receives the payment from 'Y' on 15.07.2010. When should 'X Ltd.' pay the service tax?**

   a) **on or before 05.08.2010**

   b) **on or before 05.07.2010**

   c) **on or before 31.07.2010**

   d) **on or before 30.06.2010**

5. Service tax is payable to the credit of the Central Government in :

a) Form ST-3

b) TR-6 challan

c) Form F

d) none of the above

6. 'A' charges Rs. 10,000 from 'B' towards the taxable services provided by him. He does not charge service tax from 'B'. In this context, which of the following statement is true?

a) No service tax is payable by 'A'.

b) Rs. 933.82 is payable by 'A' as service tax.

c) Rs. 1030 is payable by 'A' as service tax.

d) Rs. 1020 is payable by 'A' as service tax.

Answers

1. (d)

2. (c)

3. (d)

4. (a)

5. (b)

6. (b)

S E R V I C E T A X ~ V

1. REGISTRATION UNDER SERVICE TAX LAW

Section 69 of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994 contains detailed procedure for service tax registration, which is enumerated as under :

(a) **Application :** Every person ***liable to pay service tax*** must mandatorily make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within 30 days.

(b) **Registration of specialized category of person :** As per Notification No. 27/2005 dated 07.06.2005 following persons must also mandatorily make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within 30 days :

1. An Input Service Distributor*
2. Any provider of taxable service whose ***aggregate value of taxable service*** in a financial year exceeds Rs. 9 lakh**

**even though he may not be liable to pay service tax.*

***but he shall not be liable to collect and pay service tax till the aggregate value of taxable services is less than Rs. 10 lakh in current financial year.*

(c) **Single application for more than one service :** If the assessee provides more than one taxable service, a single application will be sufficient, mentioning therein all the taxable services.

(d) **Option for Centralized Registration :** Sometimes an assessee provides taxable service from more than one premises. Rule 4(2) of the Service Tax Rules 1994 provides that in such cases, the assessee can obtain centralized registration at his option if :

i) he has centralized billing or centralized accounting in respect of such service, and

ii) such centralized billing or centralized accounting systems are located in one or more offices or premises.

The assessee can register such offices or premises where centralized accounting or centralized billing systems are located.

In other words, if the assessee does not have any centralised billing or centralised accounting system, he shall make separate applications for registration in respect of each of such offices or premises.

(e) **Grant of Certificate of Registration :** The Superintendent of Central Excise shall after due verification of the application form, grant a certificate of registration in Form ST-2 within seven days from the date of receipt of the application. If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.

(f) **Amendment of Certificate of Registration :** Where there is a change in any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or he intends to furnish any additional information or detail, such change or information or details shall be intimated in Form ST-1 to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, within a period of thirty days of such change. The amended certificate will be granted within 7 days of receipt of duly completed intimation.

(g) **Transfer of business :** Where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.

(h) **Surrender of Certificate :** Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately to the Superintendent of Central Excise. On receipt of the certificate, 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, and the rules and the notifications issued thereunder, and thereupon cancel the registration certificate.

2. PERSONS LIABLE TO FILE RETURNS

Section 70(1) of the Finance Act, 1994 states that every person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish a return to the Superintendent of Central Excise. The return shall be furnished in such manner and at such frequency as may be prescribed. **Rule** 7 of the Service Tax Rules, 1994 prescribes the form, manner and frequency of furnishing the return.

Section 70(2) stipulates that certain notified person or class of persons shall also 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.

3. PERIODICITY AND FORM FOR RETURN

The prescribed form for the service tax returns is **'Form ST-3'**. This form is applicable in case of all assessees. In case of provisional payment of service tax, the assessee has to file a statement giving details of the difference between the service tax deposited and the service tax liable to be paid for each month in a memorandum in Form **'ST-3A'** which should accompany the return in 'Form ST-3'. The return is to be furnished **half yearly**. In other words, the return should cover the periods of 1st April to 30th September (first half-year) and 1st October to 31st March (second half-year) of a financial year.

4. DUE DATES FOR FILING OF SERVICE TAX RETURNS

The service tax return, in Form ST-3 should be filed on half yearly basis by the 25th of the month following the particular half year. The due dates on this basis are tabulated as under :

Half year	Due date
1st April to 30th September	25th October
1st October to 31st March	25th April

When the due date falls on public holiday : In case the due date of the filing of return i.e., either 25th October or 25th April falls on a public holiday, the assessee can file the return on the immediately succeeding working day.

5. CONTENTS OF THE RETURN

Apart from the general details, like financial year, half year period (April-September or October-March), name of the assessee, registration number of the premises for which return is being filed, category of taxable services, the contents of the return *inter alia*, also include month-wise details of :

i) amount received towards taxable service

ii) amount received in advance towards taxable service to be provided

iii) amount billed for exempted services and services exported without payment of tax

iv) amount billed for services on which tax is to be paid

v) abatement claimed - value

vi) notification number of abatement and exemption

vii) service tax payable

viii) education cess and secondary and higher education cess payable

ix) TR-6 challan date and number

x) credit details for service tax provider/recipient

Further, half yearly details of other payments like interest, arrears and excess amount paid and adjusted subsequently and details of amount payable but not paid as on the last day of the period for which the return is filed are also to be provided in the return.

6. DOCUMENTS TO BE SUBMITTED ALONG WITH THE RETURN

Along with ST-3 return following documents should be attached :

a) copies of TR-6 challans which indicate the payment of service tax for the months/quarter covered in the half-yearly return

b) a memorandum in Form ST-3A giving full details of the difference between the provisional amount of tax deposited and the actual amount payable for each month. Form ST-3A is to be attached only when the assessee opts for provisional payment of service tax.

First return :

Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time 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.

7. MANNER OF FILING RETURNS

The service tax return in Form ST-3 should be filed in triplicate along with the copies of TR- 6 challans for the quarters (in case of individual, proprietary concerns and partnership firms) or months (in other cases) covered in the half-yearly return. The return should be furnished to the Superintendent of Central Excise.

The assessee may also file the return with the concerned Divisional Office by registered post if he finds it difficult to file the return in person. However, the assesses should stick on to the due date and ensure that the return reaches the Divisional Office on or before the due date.

Return in case of multiple service providers : For an assessee who provides more than one taxable service, filing of a single return is sufficient. However, the details in each of the columns of the Form ST-3 have to be furnished separately for each of the taxable service rendered by him. Thus, instead of showing a lump sum figure for all the services together, service-wise details should be provided in the return.

8. E-FILING OF RETURNS [PROVISO TO RULE 7(2)]

Where an assessee has paid a total service tax of rupees ten lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he shall file the return electronically.

E-filing is a facility for the electronic filing of service tax returns by the assessee from his office, residence or any other place of choice, through the Internet. E-filing of returns is an assessee facilitation measure of the department in continuation of its modernization and simplification program.

9. NIL RETURN

Even if no service has been provided during a half year and no service tax is payable; the assessee has to file a Nil return within the prescribed time limit.

10. NO LATE RETURN

Unlike income tax, service tax law does not contain any provision for filing a late return. If the return is not filed within the prescribed time, a penalty is leviable.

11. PENALTY FOR LATE FILING OF RETURN [RULE 7C]

The Central Government has power to prescribe penalty for delayed filing of return within the overall maximum limit of Rs. 2,000. Rule 7C has been introduced for this purpose to provide penalty as follows :

Delay	Penalty
Upto 15 days	Rs. 500
16 days to 30 days	Rs. 1,000
31 days onwards	Rs. 1,000 ***plus*** Rs. 100 per day from 31st day onwards but the total penalty cannot exceed Rs. 2,000

Penalty 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).

12. 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.

13. 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;

(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.

***In this regard, it may be noted that Service Tax Return Preparers Scheme, 2009 has been notified [Notification No. 7/2009-ST Dated 03.02.2009]. Further, Form No. ST-3 in Service Tax Rules, 1994 has also been amended to furnish the details of name and identification of Service Tax Return Preparers in case the return has been prepared by them.*

Self-examination questions

1. Which of the following statement is true with regards to service tax return?

    a) A half yearly return is to be filed by each assessee.
    b) A quarterly return is to be filed by each assessee.
    c) A monthly return is to be filed by each assessee.
    d) An annual return is to be filed by each assessee.

2. What is the due date for filing returns?

    a) 5th of the month following the particular quarter
    b) 25th of the month following the particular month
    c) 25th of the month following the particular half year
    d) 5th of April each year.

3. The prescribed form for service tax return is :

    a) Form 3CD
    b) Form 2E
    c) Form ST-3
    d) Form TR-6

4. The contents of the service tax return do not include :

    a) amount billed for exempted services and services exported without payment of tax
    b) amount received towards taxable service
    c) amount received in advance towards taxable service to be provided
    d) the income or loss of the service provider

5. For an assesee who provides 3 taxable services :

    a) filing of return is not compulsory at all
    b) filing of a single return is sufficient
    c) filing of separate returns for all 3 services is necessary

Answers

1. (a)

2. (c)

3. (c)

4. (d)

5. (b)

SERVICE TAX ~ VI

1. COMMERCIAL TRAINING OR COACHING SERVICES

(A) Effective date

Service tax has been levied with effect from 1st July, 2003.

(B) Scope of taxable service [Section 65(105)(zzc)]

Any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching, is a taxable service.

(C) Definitions

Section 65(26) :

"Commercial training or Coaching" means any training or coaching provided by a commercial training or coaching centre.

Section 65(27) :

"Commercial training or Coaching Centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field *other than the sports*, with or without issuance of a certificate and includes coaching or tutorial classes but *does not include pre-school coaching and training centre* or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force.

Notes :

1. **Circular No. 107/2009 ST Dated 28.01.2009 :** Many service providers argue that the word ***commercial*** appearing in **"Commercial training or Coaching Centre"** suggests that the establishment or the institute must be **commercial (i.e. having profit motive)** in nature. It is argued that institutes which are run by charitable trusts or on no-profit basis would not fall within the phrase **"Commercial training or Coaching Centre"** and none of their activities would fall under the taxable service. This argument is clearly erroneous. As the phrase **"Commercial training or Coaching Centre"** has been defined in a statute, there is no scope to add or delete words while interpreting the same. The definition **"Commercial training or Coaching Centre"** has no mention that such institute must have 'commercial' (i.e. profit making) intent or motive. Therefore, there is no reason to give a restricted meaning to the phrase. Secondly, service tax is chargeable on the **gross amount received** towards the service charges, irrespective of whether the venture is 'profit making, loss making or charity oriented' in its motive or its outcome. The word "Commercial" used in the phrase is with reference to the **activity of training or coaching** and **not to the nature or activity of the institute** providing the training or coaching. Thus, services provided by all institutes or establishments, which fulfills the requirements of definition, are leviable to service tax.

2. An institution providing pre-school coaching to kids before joining regular schools is not subject to service tax. Pre-school is an early childhood programme in which children combine ***learning with play*** in a programme run by professionally trained adults.

3. Any institution or establishment providing commercial training or coaching is subject to service tax regardless of the fact whether any formal certificate of training or coaching is issued by it or not. However, any institute or establishment which issues any certificate or diploma or degree or any

educational qualification ***recognised by law for the time being in force*** is not subject to service tax. Hence all universities (and colleges affiliated to such universities) which are constituted under any Central, State and provincial Act are not subject to service tax. Professional Institutions like ICAI, ICSI, and ICWAI are constituted under independent Act enacted by the parliament and are therefore not subject to service tax. Institutions providing certificate or diploma of a ***foreign university*** are subject to service tax, as it cannot be said that such institutions are ***recognised by law for the time being in force.***

4. Institutions that prepare applicants for Board Examinations, University Examinations and Competitive Examinations like entrance examinations of IIT, Civil Services Examinations etc. are subject to service tax. Institutions providing postal coaching or online coaching are also subject to service tax.

(D) Exemptions

(i) Exemption to vocational/recreational training institute [Notification No. 24/2004 ST dated 10.09.2004]

Taxable services, provided in relation to commercial training or coaching by :

(a) a ***vocational training institute*** or

(b) a ***recreational training institute***;

to any person are exempt from the whole of the service tax leviable thereon.

However, this exemption is not available to the taxable services provided in relation to commercial training or coaching by a ***computer training institute***.

Explanation : For the purpose of this notification :

~~***"Vocational training institute"*** means a commercial training or coaching centre which provides vocational coaching or training that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching~~#;

"Recreational training institute" means a commercial training or coaching centre which provides coaching or training relating to recreational activities such as dance, singing, martial arts, hobbies.

"computer training institute" means a commercial training or coaching centre which provides coaching or training relating to computer software or hardware.

#Notification No. 3/2010-ST dated 27.02.2010

The aforesaid definition of vocational training institute has been substituted by the following definition :

"Vocational Training Institute" means an Industrial Training Institute (ITI) / Industrial Training Centre (ITC) affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961.

Notes :

1. The ITI and ITC have equivalent recognition and the certificates/diplomas granted by them have the same recognition. The only difference between ITC and ITI is that ITI are the institutes owned by the Government while the ITC are the institutes owned by the private parties.

2. Schedule I of the Apprentices Act, 1961 covers engineering as well as non-engineering trades. Few of the designated trades covered are :

- cutting and tailoring trades
- beautician trades
- agricultural trades
- electrical trades
- glass and ceramic trades
- heat engine trades
- hi-tech trades

Implication of the amendment :

The exemption from service tax in relation to vocational training courses would be available only if the following conditions are satisfied :

1. Vocational training institute is an ITI/ITC affiliated to the National Council for Vocational Training.
2. It offers course in any of the designated trades.

(ii) Modular Employable Skill Courses [Notification No. 23/2010-ST dated 29.04.2010]

Commercial training or coaching centre services provided in relation to "Modular Employable Skill Courses" provided by a vocational training provider registered under 'Skill Development Initiative Scheme' with the Directorate General of Employment and Training, Ministry of Labour and Employment, is exempt from service tax.

Question :

Industrial Training Institute (ITI), Jahangirpuri offered "Modular Employable Skill courses" for the month of May, 2010. It is registered under 'Skill Development Initiative Scheme' with the Directorate General of Employment and Training, Ministry of Labour and Employment. Revenue raised the demand for the service tax on the services provided by it. Examine whether the demand raised by Revenue is correct in law.

Answer :

No, the demand raised by the Revenue is not valid in law. *Notification No. 23/2010-ST dated 29.04.2010* has exempted the commercial training or coaching centre services provided in relation to "Modular Employable Skill courses" provided by a vocational training provider registered under 'Skill Development Initiative Scheme' with the Directorate General of Employment and Training, Ministry of Labour and Employment. Therefore, Industrial Training Institute (ITI), Jahangirpuri is not liable to pay service tax.

(iii) Exemption to ICAI and the like [Notification No. 10/2003 ST dated 20.06.2003]

The taxable services provided by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of ***any other institute*** or establishment, leading to issuance of any certificate or degree or educational qualification recognised by law for the time being in force, to any person, are also exempt from the whole of the service tax leviable thereon.

However, this exemption shall not be applicable if the charges for such services are paid by the ***person undergoing such course or curriculum*** directly to the commercial or coaching centre. For example, if ICAI hire the services of other institute to impart training to the students of ICAI and payment for such hiring is made to such institute by the ICAI, the same is exempt from levy of service tax.

(iv) Exemption to tuition/coaching imparted in home

Since the service tax is on commercial institution or establishment, ***individuals*** providing services at the premises of a service receiver is not covered under service tax for tuition/coaching. Only institutional coaching/training is covered under service tax net.

If commercial coaching or training centre provides commercial coaching by sending individuals to the premises of service receivers, such services would be liable to service tax as in this case service is rendered by an individual on behalf of a commercial coaching/training institute or establishment.

(v) Exemption to in-house training

When employer provides any free training themselves to his employee, such training is not taxable to service tax. However, if the employer hires an outside agency for imparting some training to its employees, then the payment made to such agency is taxable.

(vi) All India Council for Technical Education (AICTE) [Circular No. 107/01/2009 ST Dated 28.01.2009]

All India Council for Technical Education Act, 1987 provides that :

- ***no new Technical Institution or University Technical Department shall be started; or***
- ***no course or programme shall be introduced by any Technical Institution, University including a Deemed University or University Department or Collage; or***
- ***no Technical Institution, University or Deemed University or University Department or College shall continue to admit students for Degree or Diploma course; or***
- ***no approved intake capacity of seats shall be increased or varied;***
- ***without the approval of the AICTE.***

From the above it is clear that if any commercial training or coaching for imparting skill or knowledge or lessons is started without prior approval of the AICTE, then it will not be a recognised course or programme and, consequently, service tax exemption shall not be available. For example, if North Bengal University starts a technical course or programme without the approval of AICTE, it shall be subject to service tax.

(vii) Whether 'donation' is 'consideration' [Circular No. 127/09/2010 ST dated 16.08.2010]

Whether donations and grants-in-aid received from different sources by a charitable Foundation imparting free livelihood training to the poor and marginalized youth, will be treated as 'consideration' received for such training and subjected to service tax under 'commercial training or coaching service'?

The important point here is regarding the presence or absence of a link between 'consideration' and taxable service. It is a settled legal position that unless the link or nexus between the amount and the taxable activity can be established, the amount cannot be subjected to service tax. Donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. Between the provider of donation/grant and the trainee there is no relationship other than universal humanitarian interest. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

2. INFORMATION TECHNOLOGY SOFTWARE SERVICES

(A) Effective date

Service tax has been levied with effect from 16th May, 2008.

(B) Scope of taxable service [Section 65(105)(zzzze)]

Service provided or to be provided to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including :

(i) development of information technology software,

(ii) study, analysis, design and programming of information technology software,

(iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,

(iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software,

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

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

(C) Definitions

Section 65(53a) :

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

Notes :

1. The service provided must be for use in the course, or furtherance, of business or commerce. Only if the service receiver is intended to use the service for his business or commercial purposes, it is subject to service tax. If the aforesaid service is provided for personal purposes, service tax is not applicable.

2. If software is downloaded from internet from abroad, it will be 'import of service' and service tax will be payable by recipient under reverse charge method, except in cases where recipient is an individual and he can establish that the downloaded software is not for business and commerce – CBEC Letter No. 334/1/2008 dated 29-2-2008.

3. **Notification No. 53/2010 - Service Tax dated 21st December, 2010 :**

   This notification exempts the packaged or canned software (hereinafter referred to as 'said goods') from the whole of service tax, subject to the condition that :

1. the value of the said goods domestically produced or imported, for the purposes of levy of the duty of Central Excise or the additional duty of customs, if imported, as the case may be, has been determined under Section 4A of the Central Excise Act 1944 (hereinafter referred to as 'such value'); and

2. the appropriate duties of excise on such value have been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of software manufactured in India; or

3. the appropriate duties of customs including the additional duty of customs on such value, have been paid by the importer in respect of software which has been imported into India;

4. a declaration made by the service provider on the invoice relating to such service that no amount in excess of the retail sale price declared on the said goods has been recovered from the customer.

Illustration No. 1 :

Cladion Software Systems (CSS) is an information technology software company. The receipts during financial year 2010-11 are as under :

Particulars	₹
Receipts for development of information technology software	1,20,000
Receipts for providing the right to use information technology software supplied electronically	6,00,000
Receipts for programming of information technology software	3,50,000
Receipts for providing right to use the packaged software on which the amount of excise duty has been paid.	6,00,000

Determine the value of taxable services and amount of service tax payable by CSS for the financial year 2010-11.

CSS has a good track record. In financial year 2009-10, it has provided the taxable services of value of ₹ 15 lakh. The amount of service tax has been charged separately.

Solution :

Computation of value of taxable services and service tax payable for the financial year 2010-11

Particulars	₹
Receipts for development of information technology software	1,20,000
Receipts for providing the right to use information technology software supplied electronically	6,00,000
Receipts for programming of information technology software	3,50,000
Total value of taxable services	10,70,000
Service tax @ 10% (₹ 10,700,000 × 10%)	1,07,000
Add : Education cess @ 2% (₹ 1,07,000 × 2%)	2,140
Add : Secondary and higher education cess @ 1% (₹ 1,07,000 × 1%)	1,070
Service tax payable	1,10,210

Illustration No. 2 :

Smart & Express Co. is providing taxable information technology software services. The firm furnishes the following information relating to the services rendered, bills raised, amount received pertaining to this service, for the financial year ended on 31st March, 2011 as under :

	Rs.
i) Amount received being 10% of the assignment fees on 31st March, 2011 for the upgradation and enhancement of software services to be rendered during the financial year 2011-12.	6,00,000
ii) Services provided to UNICEF, an International Organisation in Gandhinagar, for analysis, design and programming of latest information technology software.	5,00,000
iii) Services billed to clients - In one of the bill amounting to Rs. 3,00,000 service tax was not charged due to conflicting nature and in another bill the firm failed to recover service tax from the client, which was charged separately, due to insolvency of the client, the bill details are as under: Being the charges for right to use IT software 8,00,000 Service tax @ 10% 80,000 EC @ 2% 1,600 SHEC @ 1% 800 8,82,400	3,00,00,000
iv) Amount received for services rendered during current financial year (excluding payment for 2 bills in item (iii) above for which also payment was received during current financial year)	1,04,78,500

Service tax and education cess have been charged separately in all the bills except wherever mentioned when it is not so charged separately. Compute the value of total taxable services and service tax payable thereon for the year ended 31.03.2011, assigning reasons in brief to the treatment of all items.

Solution :

Computation of value of taxable services and service tax payable for the financial year 2010-11

	Rs.
i) Amount received in advance for upgradation and enhancement of software services is also liable though the services were rendered during the financial year 2011-12	6,00,000
ii) Services rendered to UNICEF – Not liable to service tax [Refer Note 1]	Nil
iii) The actual amount realized is liable for service tax [Refer Note 2]	3,00,000
iv) The actual amount realized is liable for service tax [Refer Note 2]	8,00,000
v) Amount realized for services rendered (excluding items (ii) and (iii) above).	1,04,78,500
Total value of taxable services (inclusive of service tax)	**1,21,78,500**
Less : Service tax (Rs.1,21,78,500 x 10.3) / 110.3	11,37,249
Total value of taxable services	1,10,41,251
Service tax payable thereon @10%	11,04,125
Education cess @ 2%	22,083
Secondary and higher education cess @ 1%	11,041
Total service tax payable including education cesses	**11,37,249**

Notes :

1. As per Notification No. 16/2002 ST dated 02.08.2002, the Central Government has exempted all the taxable services provided by any person to the International organizations like UNICEF, from whole of the service tax leviable thereon under Section 66 of the Act.
2. The statutory liability of paying service tax does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. In such cases, the amount realized is liable for service tax by deeming the same as inclusive of service tax.
3. Figures in point (i) and (v) are taken to be inclusive of service tax as they represent total amount received.

3. LEGAL CONSULTANCY SERVICE

(A) Effective date

Service tax has been levied with effect from 1st September, 2009.

(B) Scope of taxable service

Any service provided or to be provided ***to* a business entity**, ***by* any other business entity**, in relation to advice, consultancy or assistance in any branch of law, in any manner, is a taxable service. However, any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

"Business Entity" includes an association of persons, body of individuals, company or firm, but does not include an individual.

Notes :

1. If an individual advocate provides the aforesaid service to any person or if any person provides the aforesaid service to an individual, it is not taxable service. In other words, the service provider as well as service receiver should be a business entity (excluding individual). For instance, if an individual provides legal service to a company or firm or an AOP, it is not taxable service. Similarly, if a legal firm provides legal service to an individual it is not taxable service.
2. The service provided in any branch of law should be in the nature of advice, consultancy or assistance. It even covers legal assistance. It even covers legal assistance relating to compliance with various procedural requirements. For this purpose, the law does not require that to come within the purview of "taxable service', the person rendering service should hold a specific qualification.
3. A business entity (other than an individual) may practice in corporate laws, direct and indirect tax laws, labour laws, civil laws, criminal laws, economic laws, municipal laws. These services are subject to service tax irrespective of their relation to any branch of law.

Illustration :

Luthra Consultants Ltd. started providing the legal consultancy services in Rajasthan on 01.10.2010. For the financial year 2010-11, the details of the transactions are as follows :

Particulars	₹
Amount received for appearance before any court, tribunal or authority	5,50,000
Amount received for services provided to sole proprietorship concerns	1,00,000
Amount received for tax consultancy to private companies	11,50,000

Luthra Consultants Ltd. has not collected any service tax from its clients because it is of the view that legal consultancy services are not subject to service tax.

Luthra Consultants Ltd. has approached you for advice. Examine whether Luthra Consultants Ltd. is liable to pay service tax and if so, what shall be the amount of service tax payable by it?

Note : Assume that exemption available to small service providers is not available to Luthra Consultants Ltd.

Solution :

Service provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner has been brought into the service tax net with effect from 1st September, 2009. Therefore, services provided by Luthra Consultants Ltd. are subject to service tax.

Further, the statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. In these cases, the amount recovered from the client, in lieu of having rendered the service, will be taken to be inclusive of service tax and accordingly tax payable will be calculated by making back calculations. Hence, the amount of service tax payable by Luthra Consultants Ltd. for the financial year 2010-11 would be computed as follows :

Particulars	₹
Amount received for tax consultancy to private companies	11,50,000
Value of taxable service (11,50,000 × 100 / 110.30)	10,42,611
Service tax payable (11,50,000 × 10.3 / 110.30)	1,07,389

<u>Notes</u> :

1. Legal consultancy services provided by way of appearance before any court, tribunal or authority are not taxable. Hence, the amount of ₹ 5,50,000 is not liable to service tax.
2. Legal consultancy services provided to a service recipient who is an individual (including sole proprietorship) are not taxable. Hence, the amount of ₹ 1,00,000 is not liable to service tax.

4. CONSULTING ENGINEER'S SERVICE

(A) Effective date

Service tax has been levied with effect from 7th July, 1997

(B) Scope of taxable service [Section 65(105)(g)]

- Any service provided or to be provided to any person, by a consulting engineer
- in relation to advice, consultancy or technical assistance in any manner
- in one or more disciplines of engineering including the discipline of ***computer hardware engineering***$.

Explanation :

Services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of ***both computer hardware engineering and computer software engineering*** shall also be covered@.

Note : Service relating to computer hardware and software engineering :

- $Advice, consultancy or technical assistance in the discipline of ***only computer hardware engineering*** is leviable to service tax under 'Consulting Engineer's Service' in view of Section 65(105)(g).
- @Advice, consultancy or technical assistance in the discipline of ***both computer hardware engineering and computer software engineering*** is leviable to service tax under 'Consulting Engineer's Service' as per explanation to Section 65(105)(g).
- From the above it is clear that advice, consultancy or technical assistance in the discipline of ***only computer software engineering*** is leviable to service tax under 'Information Technology Software Service' and not under 'Consulting Engineer's Service'.

(C) Definitions

Section 65(31) :

"**Consulting Engineer**" means :

- any ***professionally qualified*** engineer or any body corporate or any other firm
- who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner
- to any person
- in one or more disciplines of engineering.

Notes :

1. **Self employed engineers – Liable to service tax [Circular No. 96/7/2007-ST, Dated 23-08-2007] :**

   Consulting engineer include self-employed ***professionally qualified*** engineer, whether or not employing others for assistance. Services provided by such engineer are liable to service tax under 'Consulting Engineer Service'.

2. **Valuers of property – Covered under this service [Dr. V. Shanmughavel Vs. CCEx (Madras)] :**

   Valuers of plant and machinery being professionally qualified engineers are to be regarded as 'consulting engineers' and are liable to service tax under 'Consulting Engineer Service'.

3. **Architecture, Insurance Survey & Loss Assessment, Technical Inspection & Certification Work, and Erection, Commissioning & Installation Work :**

   These services are not covered under 'Consulting Engineer's Service'. These Services are specifically classifiable as under :

Services	Classification
Architecture	Architect's Service
Insurance Survey & Loss Assessment	Insurance Auxiliary Service
Technical Inspection & Certification Work	Technical Inspection & Certification Service
Erection, Commissioning & Installation Work	Erection, Commissioning & Installation Service

(D) Exemptions

R&D Cess paid on transfer of technology – Deductible from service tax [Notification No. 18/2002-ST, Dated 16-12-2002]

Taxable services provided by a consulting engineer to any person on transfer of technology is exempt from service tax leviable thereon to the extent of the amount of cess paid on the said transfer of technology under Section 3 of the Research and Development Cess Act, 1986.

Example :

Say, Value of taxable service = ₹ 100,

Service tax payable on above @ 10.3% = ₹ 10.30

Cess paid under Section 3 of the Research and Development Cess Act, 1986 = ₹ 3

Net service tax payable = ₹ 10.30 – ₹ 3 = ₹ 7.30

Illustration :

M/s. Sanyal & Associates is a firm of professionally qualified engineers in various disciplines of engineering. During the current financial year accounts of firm revealed a gross receipt of ₹ 108 Lakhs consisting of the following transactions :

Particulars	₹
Consultancy in the field of hardware engineering	10,00,000
Consultancy in the field of software engineering	15,00,000
Consultancy in the field of hardware as well as software engineering	12,00,000
Consultancy in the field of mechanical and applied engineering (30% of the work was done by hired engineers who charged as equivalent sum along with service tax)	20,00,000
Charges for valuation of plant and machinery	8,00,000
Consultancy for setting up a power project	18,00,000
Insurance survey and loss assessment work	6,00,000
Technical inspection and certification work	7,00,000
Erection, commissioning and installation related work	14,00,000
Cess paid on transfer of technology under Section 3 of the R&D Cess Act, 1986	(2,00,000)
Gross Receipts	1,08,00,000

You are required to compute the value taxable under 'Consulting Engineer's Service' only and the net service tax payable thereon.

Solution :

Statement showing value taxable under 'Consulting Engineer's Service' and the net service tax payable thereon

Particulars	₹
Consultancy in the field of hardware engineering	10,00,000
Consultancy in the field of software engineering *(Taxable under 'Information Technology Software Service')*	-----------
Consultancy in the field of hardware as well as software engineering	12,00,000
Consultancy in the field of mechanical and applied engineering *(Charges paid for sub-contracting can't be excluded from value of taxable service, however, the same will be eligible for CENVAT Credit)*	20,00,000
Charges for valuation of plant and machinery	8,00,000
Consultancy for setting up a power project	18,00,000
Insurance survey and loss assessment work *(Taxable under 'Insurance Auxiliary Service')*	-----------
Technical inspection and certification work *(Taxable under 'Technical Inspection & Certification Service')*	-----------
Erection, commissioning and installation related work *(Taxable under 'Erection, Commissioning & Installation Service')*	-----------
Taxable Value	**68,00,000**
Service Tax on above @ 10.3%	**7,00,400**
Less : Cess paid on transfer of technology	**2,00,000**
	5,00,400
Less : CENVAT Credit of service tax paid to hired engineers (20 x 30% x 10.3%)	**61,800**
Net Service Tax Payable	**4,38,600**

5. CUSTOMS HOUSE AGENT'S SERVICE

(A) Effective date

Service tax has been levied with effect from 15th June, 1997

(B) Scope of taxable service [Section 65(105)(h)]

- Any service provided or to be provided to any person, by a custom house agent
- in relation to :
  - the entry or departure of conveyances or
  - the import or export of goods.

(C) Definitions

Section 65(35) :

"**Customs House Agent**" means a person licensed, temporarily or otherwise, under the regulations made under Section 146(2) of the Customs Act, 1962.

Notes :

1. The services provided by a Custom House Agent (CHA) in relation to the customs formalities (i.e. documentations relating to customs clearance) for entry or departure of conveyances or the import or export of goods are taxable under this service. In other words, the services provided by a CHA are limited to Customs Station and can't extend beyond it. Other services provided by a CHA cannot be taxed under this service.
2. Sometimes, the CHA also arranges services for packing, unpacking, loading and unloading, bringing or removing the goods to or from the customs area, vessels or aircrafts for their customers (i.e. importers or exporters). These services are provided by different agencies. Normally the CHA initially makes payment to these agencies and later on recovers these payments from his customers. Similarly a CHA makes payment of statutory levies/taxes like Custom Duties, Port Charges, Cesses etc. on behalf of his customer and later on recovers amount from his customers. If CHA acts as a pure agent (Refer conditions to be fulfilled by a pure agent from **Service Tax – III**) then these are not subjected to service tax in the hands of CHA. However, out of pocket expenses charged by CHA would not be excluded and will be subject to service tax.

Illustration :

M/s. Dhaniram Clearing Agencies, a Customs House Agent licensed under Customs Act, had total gross receipts of ₹ 65 lakhs during the current financial year, which includes the following transactions :

Particulars	₹
Reimbursement of customs duty on actual basis	7,00,000
Reimbursement for various taxable services paid by the CHA on behalf of its customers (actual ₹ 4.5 lakhs, exclusive of service tax)	6,00,000
Reimbursement of freight charged by airlines on actual basis	8,00,000

Charges for warehousing the goods, after getting customers clearance, in a warehouse owned by M/s. Dhaniram Clearing Agencies	10,00,000
Charges for transporting the goods from owned warehouse to place of customers	5,00,000

You are required to compute the value taxable under 'Customs House Agent's Service' only and the net service tax payable thereon.

Solution :

Statement showing value taxable under 'Custom House Agent's Service' and the net service tax payable thereon

Particulars	₹
Total Gross receipts	**65,00,00**
Less : Reimbursement of custom duty *(CHA acts as a pure agent as reimbursement claimed on actual basis. Excluded assuming separately shown in the invoice)*	7,00,000
Less : Reimbursement for various taxable services paid by the CHA on behalf of its customers *(CHA has charged amount in excess of what has been actually incurred by him and therefore does not act as a pure agent. Hence fully includible in value. However he can claim CENVAT Credit of service tax paid by him because the services availed by him on behalf of his customers is 'input service' for him)*	-----------
Less : Reimbursement of freight charged by airlines *(CHA acts as a pure agent as reimbursement claimed on actual basis. Excluded assuming separately shown in the invoice)*	8,00,000
Less : Charges for warehousing the goods, after getting customers clearance *(CHA services extend only to the customs station. Since warehouse is owned by the CHA, the CHA may be liable for service tax under other service like 'Storage & Warehousing Service' but not under this service)*	10,00,000
Less : Charges for transporting the goods from owned warehouse to place of customers *(CHA services extend only to the customs station. Hence, Charges for transporting the goods from owned warehouse to place of customers is not liable to service tax under this service)*	5,00,000
Taxable Value	**35,00,000**
Service Tax on above @ 10.3%	**3,60,500**
Less : CENVAT credit of service tax paid on 'input service' (₹ 4.5 lakhs x 10.3%)	**46,350**
Net Service Tax Payable	**3,14,150**

6. PRACTISING CHARTERED ACCOUNTANT'S SERVICE

(A) Effective date

Service tax has been levied with effect from 16th October, 1998

(B) Scope of taxable service [Section 65(105)(s)]

- Any service provided or to be provided to any person,
- by a **practising chartered accountant**
- in his professional capacity,
- in any manner.

(C) Definitions

Section 65(83) :

"Practising Chartered Accountant" means

- a person who is a member of the Institute of Chartered Accountants of India and
- is holding a certificate of practice granted under the provision of the Chartered Accountants Act, 1949 and
- includes any concern engaged in rendering services in the field of Chartered accountancy.

(D) Exemptions

Exemption for service provided in respect of representation before statutory authorities [Notification No. 25/2006-ST, Dated 13-07-2006]

Services provided by a practising Chartered Accountant in his professional capacity to a client, relating to representing before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, are exempt from service tax.

Note : As per **Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006**, where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

Illustration :

Mr. Tanveer Sanghai is proprietor of M/s. Tanveer Sanghai & Associates, Chartered Accountants. He collected the following charges during the current financial year :

Particulars	₹
Fee for routine visit to tax-office for tax related clarification or work	60,000
Filing of returns and other documents (manual as well as e-filing)	90,000
Tuition fee from CA students from coaching of Taxation	2,00,000
Fees for drafting appeal and representing the client before CIT (Appeals) in the course of proceedings initiated under Income-tax act, 1961, by way of issue of notice	1,00,000
Audit of accounts of a client located outside India	1,50,000

Fees for drafting reply to show-cause notices and representing the client in the matter of Service Tax, VAT and other laws	25,000
Fees for carrying out statutory audit and certification work	50,000
Fees for carrying out concurrent and internal audits	80,000
Accounting charges realised from clients (other than clients whose accounts were audited by M/s. Tanveer Sanghai & Associates). Accounting work is carried out by staff	75,000
Reimbursement of various expenses (like travelling, etc.) incurred in the course of providing taxable services in India (includes ₹ 30,000 towards reimbursement of such expenses in case of hearing before statutory / appealing authorities).	1,50,000
Reimbursement of taxes (income-tax/service-tax) and filing fees (appeal filing , ROC filing fees) from the clients in respect of services referred to above	65,000

You are required to compute the value taxable under 'Practicing Chartered Accountant's Service' only and the service tax payable thereon.

Solution :

Statement showing value taxable under 'Practising Chartered Accountant's Service' and service tax payable thereon

Particulars	₹
Fee for routine visit to tax-office for tax related clarification or work	60,000
Filing of returns and other documents (manual as well as e-filing)	90,000
Tuition fee from CA students from coaching of Taxation *(Not taxable under this service as not provided in professional capacity)*	-----------
Fees for drafting appeal and representing the client before CIT (Appeals) in the course of proceedings initiated under Income-tax act, 1961, by way of issue of notice *(Exempt vide Notification No. 25/2006-ST, Dated 13-07-2006)*	-----------
Audit of accounts of a client located outside India *(Export of service not liable to tax)*	-----------
Fees for drafting reply to show-cause notices and representing the client in the matter of Service Tax, VAT and other laws *(Exempt vide Notification No. 25/2006-ST, Dated 13-07-2006)*	-----------
Fees for carrying out statutory audit and certification work	50,000
Fees for carrying out concurrent and internal audits	80,000
Accounting charges realised from clients (other than clients whose accounts were audited by M/s. Tanveer Sanghai & Associates). Accounting work is carried out by staff *(Not covered under this service as not provided in 'professional capacity'. Taxable as 'Business Support Service' as it is 'accounting and processing of transaction')*	-----------
Reimbursement of various expenses (like travelling, etc.) incurred in the course of providing taxable services in India (includes ₹ 30,000 towards reimbursement of such expenses in case of hearing before statutory / appealing authorities). *(These expenses are necessary for providing the taxable service, hence includible in value of taxable services as per Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 . However, reimbursement of expenses relating to exempt services is not to be included. Therefore, taxable amount will be ₹ 1,20,000 (₹ 1,50,000 – ₹ 30,000)*	1,20,000
Reimbursement of taxes (income-tax/service-tax) and filing fees (appeal filing , ROC filing fees) from the clients in respect of services referred to above *(These expenses are not incurred for providing taxable service, but, are incurred on behalf of clients as a 'Pure Agent' and therefore not includible)*	-----------
Taxable Value	**4,00,000**
Service Tax on above @ 10.3%	**41,200**

7. MANPOWER RECRUITMENT OR SUPPLY AGENCY'S SERVICE

(A) Effective date

Service tax has been levied with effect from 7th July, 1997

(B) Scope of taxable service [Section 65(105)(k)]

- Any service provided or to be provided to any person,
- by a manpower recruitment or supply agency
- in relation to the recruitment or supply of manpower,
- temporarily or otherwise, in any manner.

Explanation :

Recruitment or supply of manpower includes services in relation to :

- pre-recruitment screening,
- verification of the credentials and antecedents (history) of the candidate and
- authenticity of documents submitted by the candidate.

(C) Definitions

Section 65(68) :

"Manpower Recruitment or Supply Agency" means :

- any person engaged in providing any service, directly or indirectly, in any manner
- for recruitment or supply of manpower,
- temporarily or otherwise, to any other person.

CBEC Clarification [Master Circular No. 96/7/2007-ST Dated 23-08-2007]

1. Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/MNCs, who come to the institutes for recruiting candidates through campus interviews. Such institutes fall within the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment.
2. Business or industrial organisations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual. Such supply agencies are liable to service tax under this service.

Letter F.No. B1/6/2005-TRU, Dated 27-7-2005

Service tax is charged on the full amount of consideration for supply of manpower, whether full time or part time. The value includes recovery of staff costs from the recipient e.g. salary and other contributions. Even if the arrangement does not involve the recipient paying these staff costs to the supplier (because the salary is paid directly to the individual or contributions are paid to the respective authority) these amounts are still part of the consideration and hence from part of gross amount.

Notification No. 1/2009-ST, Dated 05-01-2009

'Manpower Recruitment & Supply Service' provided to a goods transport agency for use in GTA Service, is exempt from whole of service tax.

Trade Notice No. 53/97, Dated 04-07-1997

In certain cases, a person approaches a manpower recruitment agency for being employed in a suitable position abroad, as normally happens in case of employment in Gulf countries. Such services provided to the prospective candidate for employment is also covered under this service.

Illustration :

M/s. Sai Manpower Services (M/s. SMS) received an aggregate sum of ₹ 105 lakhs from the following services provided by it :

(a) Temporary supply of various employees hired by it (i.e. M/s. SMS) to various industries for carrying out various assignments : ₹ 15 lakhs (Salaries amounting to ₹ 20 lakhs to various categories of labour was directly paid by the industries). This includes a sum of ₹ 2 lakhs charged from a goods transport agency, which paid a salary of ₹ 3 lakhs directly.

(b) In some other cases, the employees of M/s. SMS were permanently transferred as employees of its clients on the first day of the year itself. For the said purpose, M/s. SMS charged an employee transfer fee of ₹ 5 lakhs. The clients paid a salary of ₹ 30 lakhs to the employees during the year.

(c) M/s. SMS runs a job-search engine, whereby it maintains database of all prospective candidates for the various posts in various companies. It collected an aggregate of ₹ 10 lakhs from various companies for providing access to such data.

(d) When the companies selected a few candidates, M/s. SMS was asked to verify the credentials and history of such candidates and also examine the authenticity of the documents submitted by them for which M/s. SMS charges a sum of ₹ 13 lakhs.

(e) M/s. SMS owns a premises where the prospective employers come, conduct the interviews and make selections. M/s. SMS provides services in relation thereto. A total recruitment fee of ₹ 31 lakhs was charged for the employers and an equivalent sum of ₹ 31 lakhs (equal to one month salary of the employees) was charged for the candidates selected.

Compute the value of taxable service under 'Manpower Recruitment & Supply Service' and the service tax, if any, payable thereon by M/s. SMS for this service only.

Solution :

Statement showing value taxable under 'Manpower Recruitment & Supply Service' and the service tax payable thereon

Particulars	₹
(a) Temporary supply of labour/employees of the manpower agency (M/s. SMS) is liable to service tax. The salaries paid to such labour forms part of the value of taxable service even if directly paid by the client. However, such services provided to GTA are exempt. Hence, taxable amount = [(15-2)+(20-3)] = ` 30 lakhs	30,00,000
(b) In case of permanent transfer of employees, the employer and employee relationship between M/s. SMS and the employees come to an end. Hence salaries paid to such employees by their actual employers can't be a subject matter of service tax. However, employees transfer fee is a consideration for service provided by M/s. SMS to its clients and is, therefore, liable to service tax.	5,00,000
(c) Providing access to prospective-employees related data is covered by this service.	10,00,000

(d) Services of verification of credentials and history of prospective candidates and authenticity of documents submitted by them are covered by this service.	13,00,000
(e) Providing campus for recruitment and charging fees therefor is liable to service tax under this service. Both, the prospective employers and the candidates, are service receivers for the manpower recruitment agency. Hence, consideration charged from both of them will form part of taxable value (i.e. 31 lakhs+31 lakhs)	62,00,000
Taxable Value	**1,20,00,000**
Service Tax on above @ 10.3%	**12,36,000**

8. CARGO HANDLING SERVICE

(A) Effective date

Service tax has been levied with effect from 16th August, 2002

(B) Scope of taxable service [Section 65(105)(zr)]

- Any service provided or to be provided to any person,
- by a cargo handling agency
- in relation to cargo handling services.

(C) Definitions

Section 65(23) :

"Cargo Handling Service" means :

- loading, unloading, packing or unpacking of cargo
- and includes :
    - cargo handling services provided for freight in special containers or for non containerised freight,
    - services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and
    - service of ***packing together with transportation*** of cargo or goods, with or without one or more of other services like loading, unloading, unpacking,
- but does not include :
    - handling of export cargo or
    - passenger baggage or
    - mere transportation of goods.

(D) Exemptions

(i) Notification No. 10/2002-ST dated 01.08.2002

Service provided to any person by cargo handling agency in relation to :

- Agricultural produce or
- Goods intended to be stored in the cold storage,

is fully exempt from service tax.

(ii) Notification No.1/2009-S.T., dated 5-1-2009

Service provided to a goods transport agency for use in Goods Transport Agency (GTA) service is exempt from service tax.

(E) GTA Service Vs. Cargo Handling Service

[Circular No. 104/7/2008-ST, dated 06.08.2008]

❖ **Transportation with Packing/Unpacking, etc.** :

If the essential/predominant character of services provided is transportation of goods by road in a goods carriage and packing is undertaken as an integral part of the service provided, then, such service, shall be taxable as GTA service.

❖ **Packing/unpacking, etc. with Transportation** :

Since transportation is not essential character of cargo handling service, hence, if essential character is not transportation but transportation is merely identical to packing, etc., then, charges (inclusive of transportation) will be taxable as Cargo Handling Service.

❖ **Mere transportation of goods** :

Mere transportation of goods is not taxable here; it is taxable as GTA Service.

(F) Clarification on Scope of Taxable Service

[F. No. B11/1/2002-TRU, dated 01.08.2002]

❖ **Means of transport & examples of cargo handling agencies** :

Cargo handling implies handling (activity of packing, unpacking, loading & unloading) of goods meant to be transported by any means of transportation namely truck, rail, ship or aircraft. Few examples of cargo handling agencies are Container Corporation of India (CCI), Inland Container Depot (ICD), Container Fright Stations (CFS), etc.

❖ **Services provided in 'port' or 'other port' or airport'- Not covered** :

Cargo handling activity undertaken in 'port' or 'other port' or 'airport' is taxable under respective specific heads viz. 'Port Service', 'Other Port Service' or 'Airport Services, where the service is provided by a port, other port or airports authority, or, any persons authorised by it. Hence, the same is not covered here.

❖ **Unaccompanied baggage also not covered** :

Passenger baggage has been excluded from levy of service tax. Unaccompanied baggage of a passenger will also not be leviable to service tax.

❖ **Charges recovered from CHAs also taxable** :

If Container Freight Stations (CFSs) recover any charges for handling import cargo, not from importer directly, but, from the customs house agents (CHA), then, such charges will also be liable to tax.

❖ **Marketing of cargo for airlines** :

Some cargo handling agencies also acts as marketing agents for individual airlines for which they get a commission on the fright. Marketing or canvassing for cargo for airlines is not 'cargo handling service'.

❖ **Handling of empty containers** :

Container Freight Stations (CFSs) also sometimes undertake storing/washing/ repairing and handling of empty containers for the shipping lines for which they charge the shipping lines. Empty containers cannot be treated as a cargo. Therefore, the said activities do not cone within the purview of cargo handling services.

❖ **Individuals undertaking loading/unloading of cargo** :

If someone hires labour/labourers for loading or unloading of goods in their individual capacity, such labour/labourers, acting in individual capacity, would not be liable to service tax as a cargo handling agency.

Illustration :

M/s. Bharat Cargo Handling Agency, a sole proprietary firm presents the following information of the services provided by it during the year :

(a) Charges of loading , unloading, packing and unpacking of cargo : ₹ 5 lakhs;

(b) Packing together with transportation of cargo : ₹ 4 lakhs;

(c) Handling of export cargo : ₹ 2 lakhs;

(d) Handling of passenger baggage & unaccompanied baggages : ₹ 2 lakhs + ₹ 1 lakhs;

(e) Transportation of goods along with packing thereof : ₹ 2 lakhs ;

(f) Handling of goods stored in cold storage : ₹ 1 lakhs;

(g) Marketing of cargo for various airline companies : ₹ 3 lakhs;

(h) Handling of empty containers : ₹ 40,000;

(i) Motor vehicle purchased for use in cargo handling services : ₹ 5 lakhs (Excise Duty : 14.42%);

(j) Other inputs and input services used in providing taxable cargo handling service : ₹ 3 lakhs and ₹ 2 lakhs respectively (Excise Duty : 8%; and Service Tax : 10%).

Compute the value of taxable service under 'Cargo Handling Service' and the service tax, if any, payable thereon by Bharat Cargo Handling Agency for cargo handling service only.

Solution :

It must be noted that only an individual providing any cargo handling service in his individual capacity is not liable to service tax. However in this case M/s. Bharat Cargo Handling Agency is a sole proprietary firm (which is different from individual acting in individual capacity). Hence, M/s. Bharat Cargo Handling Agency is a cargo handling agency liable to service tax.

Statement showing value taxable under 'Cargo Handling Service' and the service tax payable thereon

Particulars	₹
(a) Charges of loading , unloading, packing and unpacking of cargo	5,00,000
(b) Packing together with transportation of cargo	4,00,000
(c) Handling of export cargo	----------
(d) Handling of passenger baggage & unaccompanied baggages	----------
(e) Transportation of goods along with packing thereof (Taxable as GTA Service)	----------
(f) Handling of goods stored in cold storage	----------
(g) Marketing of cargo for various airline companies	----------
(h) Handling of empty containers	----------
Taxable Value	9,00,000
Service Tax on above @ 10.3%	92,700
Less : CENVAT Credit on motor vehicle purchased for use in cargo handling services (In case of capital goods only 50% of value is eligible for CENVAT Credit in current year. Hence CENVAT Credit : ₹ 5 Lakhs x 50% x 14.42%)	36,050
Less : CENVAT Credit on other inputs and input services used in providing taxable cargo handling service (3 Lakhs x 8.24% + 2 lakhs x 10.3%)	45,320
Net Service Tax Payable	**11,330**

SERVICE TAX ~ VII

PRACTICAL PROBLEMS ON SERVICE TAX

Problem No. 1 :

A service provider provides taxable service valuing Rs. 10,00,000. Compute the amount of service tax payable by him.

Solution :

Service tax payable = 10,00,000 x 10.3% = Rs. 1,03,000 (Rs. 1,00,000 Service Tax + Rs. 2,000 EC + Rs. 1,000 SHEC).

Problem No. 2 :

A service provider provides taxable service the gross amount charged in respect of which is Rs. 10,00,000. Compute the amount of service tax payable by him if the gross amount so charged is inclusive of service tax.

Solution :

Service tax payable = 10,00,000 x 10.3 /110.3 = Rs. 93,382.

Problem No. 3 :

A service provider provides taxable service the gross amount charged in respect of which is Rs. 10,00,000 plus Rs. 1,03,000 towards service tax charged separately in the bill, the total bill amount being Rs. 11,03,000. Compute the amount of service tax payable by him, in the following cases :

(a) the client pays Rs. 11,00,000 in full and final settlement of the bill; or

(b) the client pays Rs. 10,00,000 in full and final settlement of the bill; or

(c) the client pays Rs. 9,00,000 in full and final settlement of the bill.

Solution :

Where the client pays only a part of the bill amount in full and final settlement :

(a) The sum of Rs. 11,00,000 so received is to be regarded as ***'gross amount inclusive of service tax'***. Accordingly, the service tax payable will be = 11,00,000 x 10.3 /110.3 = Rs. 1,02,720.

(b) Service tax payable = 10,00,000 x 10.3/110.3 = Rs. 93,382.

(c) Service tax payable = 9,00,000 x 10.3/110.3 = Rs. 84,044.

Problem No. 4 :

M/s. Renu Consultants are a labour contractor of manpower to M/s. Sonu Creations. They charge the principal employer for the wages of their labour which amounts to Rs. 1,20,000 plus their service charges of Rs. 12,000 for arranging the labour. The issue is whether service is payable on the gross amount charged by them or only their charges for labour. Advise suitably.

Solution :

As per section 67, the value of taxable service is the gross amount charged by the service provider for the provision of service. Hence, the value of taxable service in this case = 1,20,000 + 12,000 = Rs. 1,32,000.

Problem No. 5 :

A beauty parlour charges Rs. 1,00,000 from a client for providing beauty treatment service, the break up of the bill is as follows :

Labour and facility charges	Rs. 60,000
Value of cosmetics and toilet preparations consumed in providing the service	Rs. 30,000
Value of cosmetics and toilet preparations sold to the client	Rs. 10,000

Compute the amount of service tax to be charged from the client.

Solution :

The labour and facility charges are liable to service tax. The Value of cosmetics and toilet preparations consume in providing the service forms intrinsic part of the value of service. The materials consumed during the provision of service form part of the cost of that service. Hence, the value of consumed materials will be included in the value of service.

However, the value of cosmetics and toilet preparations sold to client will be exempt under Notification No.12/2003 ST, dated 20.6.2003 on the fulfillment of conditions specified therein.

Hence, the value of taxable service = 60,000 + 30,000 = Rs. 90,000, the service tax on which at the rate of 10.3% amounts to Rs. 9,270, which should be charged in the bill.

Problem No. 6 :

Answer the following :

a) X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television costing Rs. 5 lakh. Y billed Rs. 15 lakh to X including charges for television advertisement, showing them separately in invoice. Mr. Y says that value of taxable service in his case is Rs. 10 lakh only, as he acted as pure agent of Mr. X while taking advertisement. Compute service tax to be billed.

b) In the course of providing a taxable service, a service provider incurs costs such as travelling expenses, postage, telephone, etc to the tune of Rs. 20,000. He charges Rs. 80,000 for his services and indicates the said costs separately on the invoice issued to the recipient of service. Compute the amount of service tax to be billed by the service provider.

c) A contracts with B, architect for building a house and B's fees is fixed at Rs. 3,00,000. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., totaling Rs. 50,000 to enable him to effectively perform the provision of service to A. compute the service tax liability of B.

d) A clearing and forwarding agent charges Rs. 50,000 for his services, which includes octroi charges Rs. 10,000 paid on behalf of his client. Compute the value of taxable service and service tax liability.

e) A cable operator charges Rs. 10,000 for his service, which includes entertainment tax Rs. 2,000 paid on behalf of his client. Compute the value of taxable service and service tax liability.

Solution :

a) Since advertising service is an input service for the estate agent in order to enable or facilitate him to perform his service as an estate agent, hence, Mr. Y doesn't act as pure agent of Mr. X in taking advertisement. Hence, service tax = Rs. 15 lakh x 10.3% = Rs. 1,54,500.

b) In this case, the service provider is not acting as an agent of recipient of service but procures such inputs or input service on his own account for providing taxable service. Such expenses do not become reimbursable expenditure merely because they are indicated separately in invoice issued by service provider to recipient of service. Hence, service tax = (80,000 + 20,000) x 10.3% = Rs. 10,300.

c) Value of taxable service = 3,00,000 + 50,000 = Rs. 3,50,000, and service tax @ 10.3% = Rs. 36,050.

d) The clearing and forwarding agent acts as pure agent of the client while paying Octroi Charges. Hence, value of taxable service = 50,000 – 10,000 = Rs. 40,000 and service Tax @ 10.3% = Rs. 4,120.

e) The cable operator acts as pure agent of the client while paying entertainment tax. Hence, value of taxable service = 10,000 – 2,000 = Rs. 8,000, and service tax @ 10.3% = Rs. 824.

Problem No. 7 :

Mr. X, a custom house agent, charges Rs. 1,00,000 from a client. This sum includes Rs. 10,000 towards payment of customs duty on behalf of the client. Compute the service tax to be charged from the client.

Solution :

Expenses incurred by the service provider in his capacity as pure agent do not form part of the value of taxable service. Here, the custom house agent Mr. X has paid Rs. 10,000 towards customs duty on behalf of the client, which is an expenditure incurred by Mr. X in his capacity as 'pure agent'. Since the sum of Rs. 10,000 does not include any element of profit, the same will not form part of the value of taxable service. Hence, the value of taxable service = 1,00,000 – 10,000 = Rs. 90,000. Service tax to be charged = 90,000 x 10.3% = Rs. 9,270.

Problem No. 8 :

Mr. Y, an architect, finds a client Mr. A who needs services of architect as well as interior decorator. Mr. A asks Mr. Y to find an interior decorator on his behalf, decide the terms of his engagement and also his remuneration, make payment to him on his behalf (Mr. A's behalf) and provide a consolidated bill showing relevant break- ups, to him (Mr. A). Mr. Y finds a interior decorator Mr. Z, whose remuneration is fixed at Rs. 2,00,000 (inclusive of all taxes). Mr. Y charges Rs. 8 lakhs towards the value of taxable service provided by him. Compute the amount of service tax to be charged in the bill by Mr. Y if :

a) the bill amount includes Rs. 2,00,000 additional towards the cost of interior decorator ; or

b) the bill amount includes Rs. 2,50,000 additional towards the cost of interior decorator.

Solution :

a) In this case, bill amount includes only the actual cost of interior decorator. Since Mr. Y has acted as pure agent of Mr. A, he will get deduction of such cost. Therefore, the value of taxable service provided by Mr. Y = 10,00,000 – 2,00,000 = Rs. 8,00,000, on which service tax = 8,00,000 x 10.3% = Rs. 82,400.

Note : The interior decorator Mr. Z will pay service tax = Rs. 2,00,000 X 10.3 / 110.3 = Rs. 18,676. The client Mr. A can claim CENVAT Credit of Rs. 82,400 + Rs. 18,676 = Rs. 1,01,076.

b) In this case amount includes amount in excess of the actual cost of interior decorator, hence, Mr. Y will not be 'Pure agent' of Mr. A and thus, he will not get deduction of such cost. Therefore, the value of taxable service provided by Mr. Y = Rs. 8,00,000 + Rs. 2,50,000 = Rs, 10,50,000, on which service tax = 10,50,000 x 10.3% = Rs. 1,08,150.

Note : The interior decorator Mr. Z will pay service tax = Rs. 2,00,000 x 10.3 / 110.3 = Rs. 18,676. The service provided by Mr. Z will be treated as input service in case of Mr. Y and Mr. Y can get CENVAT credit of Rs. 18,676, which can be used for payment of his service tax liability. The client Mr. A can claim CENVAT credit of Rs. 1,08,150.

Problem No. 9 :

Hotel Marudhar Palace charges 10% of bill amount as service charges and the Department has asked them to pay service tax on it. The assessee has submitted that the amount @ 10% collected form the customer is subsequently disbursed among the staff. Therefore, it is not the part of their income and cannot be included in gross amount charged by them. Examine the case and advise suitably.

Solution :

As per section 67, the value of taxable service shall be the ***gross amount*** charged by service provider for the taxable service provided or to be provided by him. Since the assessee was charging service charges (@ 10% of bill amount) from its customers for providing the services, therefore, the said amount was liable to be included in the gross amount charged.

Therefore, service charges (@ 10% of bill amount) charged by Hotel Marudhar Palace are includible in gross amount charged by them and will be liable to service tax.

Problem No. 10 :

The value of taxable service provided by Mr. A during the financial year 2006-07 was Rs. 7 lakh. During the financial year 2007-08, Mr. A provides taxable services valuing Rs. 10.5 lakh but receives payments towards taxable service valuing Rs. 9 lakh. Compute the amount of service tax payable by him. Will he get any exemption in the financial year 2008-09?

Solution :

Since the value of taxable services provided in preceding financial year was not exceeding Rs. 8 lakhs, Mr. A would get exemption in current year in respect of aggregate value not exceeding Rs. 8 lakhs. Hence, service tax payable = (9 lakh – 8 lakh) X 12.36% = Rs. 12,360.

He will not be eligible for exemption in the financial year 2008-09, as the value of taxable services provided in the financial year 2007-08 exceeds Rs. 10 lakh.

Problem No. 11 :

XYZ Co. Ltd. provided services valuing Rs. 6 lakhs during the financial year 2006-07. During 2007-08, it has provided taxable services valuing Rs. 10 lakhs and has received payment towards taxable services Rs. 6.5 lakhs. It also received services in the nature of transport of goods by road valuing Rs. 50,000, in respect of which it is the person liable to pay service tax. Compute the amount of service tax, if any, payable by XYZ Co. Ltd. for the financial year 2007-08. It is given that goods transport service is exempt to the extent of 75% of value thereof.

Solution :

M/s. XYZ Co. Ltd is eligible for small service provider exemption during the financial year 2007-08, as the value of taxable services provided during the financial year 2006-07 doesn't exceed Rs. 8 lakhs. For the value of taxable services received during the financial year 2007-08, no tax liability would arise, as the payments received do not exceed Rs. 8 lakhs. However, for goods transport agency services received, in respect of which M/s XYZ Co. Ltd is the person liable to pay service tax, the company cannot claim small service provider exemption. Therefore, it will have to pay service tax = 50,000 x 25% x 12.36% = Rs. 1,545.

Problem No. 12 :

Mr. A was renting immovable properties to various industrial concerns, which has been made taxable service w.e.f. 1-6-2007. During the year 2006-07, he provided services valuing Rs. 10 lakhs; payment received in the same year. During the year 2007-08, he provided services of Rs. 2 lakhs up to May 2007; and service of Rs. 10 lakhs thereafter. Payment of Rs. 12 lakhs has been received during June 2007 to March 2008. Compute service tax, if any, payable by him.

Solution :

Since the services of renting of immovable property has been made taxable services w.e.f. 1-6-2007, therefore, the value of ***taxable services*** provided during the year 2006-07 by Mr. A was NIL. Therefore, Mr. A can claim small service provider exemption during the year 2007-08. During the financial year 2007-08, the taxable services provided during the period up to May 2007 will not be liable to service tax irrespective of the fact that payment thereof is received after the service become taxable. Only the taxable service provided during the period from June 2007 to March 2008 would be taxable; however, small service provider exemption of Rs. 8 lakhs would be available. Therefore, service tax payable by Mr. A = (Rs. 10 lakhs – Rs. 8 lakhs) x 12.36% = Rs. 24,720.

Problem No. 13 :

Compute the amount of service tax payable by Mr. B, a provider of taxable services, during the financial year 2007-08 from the following details :

Financial year 2006-07 :

Value of taxable services provided	Rs. 8 lakhs (Tax Rate 12.24%)
Payment received towards taxable services	Rs. 8.5 lakhs (Rs. 2 lakhs of F.Y. 2005-06 – Rate 10.2%; and Rs. 6.5 lakhs of F.Y. 2006-07 – Rate 12.24%)

Financial year 2007-08 :

Value of taxable services provided	Rs. 9 lakhs (Tax Rate 12.36%)
Payment received towards taxable services	Rs. 10 lakhs (Rs. 8.5 lakhs of F.Y. 2007-08 received up to Feb, 2008 – Rate 12.36%; and Rs. 1.5 lakhs of F.Y 2006-07 received in March, 2008 – Rate 12.24%).

Solution :

Since the value of taxable services provided during the financial year 2006-07 was Rs. 8 lakhs i.e. not exceeding Rs. 8 lakhs, Mr. B can claim small service provider exemption during the financial year 2007-08. The said exemption upto Rs. 8 lakhs shall operate only upon the first payment upto 8 lakhs received during the financial year 2007-08. Accordingly, out of payment of Rs. 10 lakhs received during 2007-08, the first payment received upto Rs. 8 lakhs would be exempt. Service tax payable by Mr. B = 12.36% on Rs. 50,000 + 12.24% on Rs. 1,50,000 = Rs. 24,540.

<u>Problem No. 14</u> :

A Limited has agreed to render services to Mr. G. The following are the chronological events :

1. Contract for services entered into on 31-05-2010
2. Advance received in June, 2010 towards all services - Rs. 1,20,000
3. Total value of services, billed in August, 2010 – Rs. 4,20,000
4. Above includes non-taxable services of Rs. 1,40,000
5. Balance amount received in March, 2011

When does the liability to pay service tax arise and for what amount? Contract contains clear details of services; consideration and service tax are charged separately, as mutually agreed upon.

<u>Solution</u> :

The liability to pay service tax arises at the time of receipt of advance in June, 2010 and at the time of receipt of balance consideration in March, 2011. Service tax is payable as soon as any advance is received, as taxable service includes "service to be provided" and payments received, before during or after provision of taxable services from part of gross amount charged for the taxable services.

Further, the liability to pay service tax arises only upon the receipt of the value taxable services and not when the bill is raised.

<u>I. Advance Portion – Due date for payment of service tax 5th July, 2010</u> :		
Advance received towards ***all*** services in June, 2010	(A)	1,20,000
Total value of all services (taxable as well as non-taxable) billed in August, 2010	(B)	4,20,000
Total value of taxable services billed in August, 2010 (4,20,000-1,40,000)	(C)	2,80,000
Proportionate advance received towards taxable services (A x C/B)	(D)	80,000
Service tax on the amount of proportionate advance (D x 10.3%)		8,240
<u>II. Balance Portion – Due date for payment of service tax 31st March, 2011</u> :		
Balance received towards all services in March, 2011 (4,20,000-1,20,000)	(A)	3,00,000
Total value of all services (taxable as well as taxable) billed in August, 2010	(B)	4,20,000
Total value of taxable services billed in August, 2010 (4,20,000-1,40,000)	(C)	2,80,000
Proportionate balance received towards taxable services (A x C/B)	(D)	2,00,000
Service tax on the amount of proportionate advance (D x 10.3%)		20,600

<u>Problem No. 15</u> :

Mr. AJAR, a Chartered Accountant, raised an Invoice for Rs. 28,090 (25,000 + 3,090 service tax) to a client on 20.1.2009. Client, however, has paid a lump sum of Rs. 26,000 on 28.4.2009 for full and final settlement -

(a) How much service tax Mr. AJAR has to pay and when does this tax become due for payment?

(b) What will be his liability, if client refuses to pay service tax and pays only Rs. 25,000 in total?

Solution :

(a) Service tax = 26,000 x 12.36 / 112.36 = Rs. 2,860 approx., which is payable by 5th July 2009.

(b) Service tax = 25,000 x 12.6 / 112.36 = Rs. 2,750.

Problem No. 16 :

Give due dates for payment of service tax in the following cases :

(a) M/s. X & Co., a sole-proprietorship concern receives payment of services provided in July, 2009 partly on 8th August, 2009, partly on 1st January, 2010 and balance on 25th April, 2010.

(b) M/s. XY & Co., a partnership concern, receives payment of services provided in April, 2010 on 28th February, 2011.

(c) M/s. X Limited, a company, receives payment of services provided in April, 2010 on 28th February, 2011.

Solution :

(a) 5th October, 2009 for payment received in 8th August, 2009, 31st March, 2010 for payment received in 1st January, 2010, 5th July, 2010 for payment received in 25th April, 2010.

(b) 31st March, 2011.

(c) 5th March, 2011.

Problem No. 17 :

The service provider is abroad. He renders service valuing Rs. 50 lakhs to subsidiary of an Indian company. Subsidiary company is also located abroad. Payment to service provider is done by holding Indian company. Does this attract service tax? If yes, compute the service tax liability.

Solution :

In this case, the holding Indian Company and its subsidiary are separate persons. The service is provided by a person abroad and is received by a subsidiary company, which is also out of India. Thus, there can be no charge of service tax in India. The fact that holding company pays the amount does not entail any consequence.

Problem No. 18 :

Mr. Santa provided taxable services valuing Rs. 15,00,000 to Mr. Banta during the month of February, 2009 (out of which taxable services valuing Rs. 3,00,000 were provided during 24-02-2009 to 28-02-2009). The invoice is raised on 28-02-2009 on which date the full payment is received. Compute the amount of service tax to be raised in the invoice.

Solution :

The service tax is chargeable at the rate in force on the date on which the services are provided. Therefore, for the services provided before 24-02-2009 the rate of service tax shall be 12.36%; while the rate of service tax will be 10.3% for the services provided during 24-02-2009 to 28-02-2009. Accordingly, the service tax to be charged by Mr. Santa in the invoice = 12,00,000 x 12.36% + 3,00,000 x 10.3% = Rs. 1,79,220.

Problem No. 19 :

Calculate the net service tax payable under the provision of Rule 2A of Service tax (Determination of Value) Rules, 2006 relating to determination of value of services in the execution of a works contract from the following particulars :

		Rs.
1.	Gross amount charged for works contract (including VAT of Rs. 8,750)	1,08,750
2.	Value of materials sold in the execution of works contract (excluding VAT)	70,000
3.	CENVAT Credit on (2) above	1,000
4.	Service tax paid on input services	1,000
5.	CENVAT Credit on capital goods issued to works contract service	1,000

Solution :

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

As per Rule 2A to Service Tax (Determination of Value) Rules, 2006 :

(i) **Value of works contract service** shall be equivalent to the ***gross amount charged*** for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

(ii) ***Gross amount charged*** for the works contract shall not include Sales-tax/Value Added Tax (VAT) as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract.

Hence Net service tax payable can be calculated as follows :

	Rs.
Gross amount charged for works contract (including VAT of Rs. 8,750)	1,08,750
Less : VAT	8,750
Gross amount charged for works contract (excluding VAT)	1,00,000
Less : Value of materials sold in the execution of works contract (excluding VAT)	70,000
Value of works contract service as per Rule 2A	**30,000**
Gross amount of service tax @ 10.3%	3,090
Less : CENVAT Credit to be utilized for payment of service tax :	
CENVAT Credit on materials sold (not available as materials sold do not form part of the **Value of works contract service**)	Nil
Service tax paid on input services	1,000
CENVAT Credit on capital goods (available only to the extent of 50% of duty paid on capital goods in the year of purchase; the balance shall be available in the next financial year only) ***(Refer Note 1 below)***	500
Net service tax payable	**1,590**

Note 1 : As per CENVAT Credit Rules, 2004, in case of capital goods, credit of duty not exceeding 50% can be taken in the year of acquisition and the balance in the subsequent year provided that capital goods are still in possession. However, if the capital goods are removed/sold in the first year itself, entire 100% credit will be allowed in the year of acquisition.

<u>Problem No. 20</u> :

Discuss whether the following persons are liable to apply for registration under the service tax law and if yes, by which date :

(a) A provider of taxable service, whose aggregate value of taxable services is Rs. 8,80,000 upto 31-03-2011.

(b) A provider of taxable service, whose aggregate value of taxable services is Rs. 9,01,000 on 01-01-2011.

(c) A provider of taxable service, who has provided services as follows :

- Aggregate value of services upto 15-05-2010 (i.e. before the services becomes taxable) : Rs. 5,00,000
- Aggregate value of service from 16-05-2010 to 31-03-2011 : Rs. 8,95,000.

(d) An input service distributor who starts his business w.e.f. 01-01-2011.

(e) A provider of taxable service who starts his business w.e.f. 11-08-2010 and whose aggregate value of taxable services as on 10-10-2010 becomes Rs. 9,02,000.

(f) A provider of taxable service under an unregistered brand name of another person. Aggregate value of taxable services was Rs. 6,00,000 upto 31-03-2011.

<u>Solution</u> :

(a) Not liable for registration, as aggregate value of taxable services does not exceed Rs. 9 Lakhs.

(b) Liable for registration. Application to be made upto 31-01-2011.

(c) Not liable for registration, as aggregate value of ***<u>taxable</u>*** services does not exceed Rs. 9 Lakhs. Aggregate value of ***<u>taxable</u>*** services is only Rs. 8,95,000.

(d) Liable for registration. Application to be made upto 31-01-2011.

(e) Liable for registration. Application to be made upto 09-11-2010.

(f) A provider of taxable service under a registered brand name of another person is liable to apply for registration within a period of 30 days of commencement of business of providing taxable service. A service provider who provides taxable service under a trade name or brand name, whether registered or not, of another person, can't avail benefit of Notification No.6/2005 ST dated 01.03.2005 relating to exemption for small service provider. Hence such service provider becomes ***liable to pay tax service tax*** when he first time provides a taxable service under a registered brand name of another person.

<u>Problem No. 21</u> :

Alpha Limited starts providing a taxable service from 15th June, 2010. Details of bills issued by Alpha Limited during the F.Y. 2010-11 are as follows :

Date	Bill No.	Bill Amount
22-06-2010	1	6,50,000
28-08-2010	2	2,25,000
17-10-2010	3	1,15,000
13-01-2011	4	1,20,000
14-03-2011	5	1,35,000

Whether Alpha Limited is required to be registered and liable to pay service tax for the F.Y. 2010-11?

Solution :

Alpha Limited is required to be registered and pay service tax for the financial year 2009-10, which can be explained with the help of the following table :

Date	Bill No.	Individual Bill Amount	Cumulative Bill Amount	Registration	Service Tax Payable
22-06-2010	1	6,50,000	6,50,000	Not required	Nil
28-08-2010	2	2,25,000	8,75,000	Not required	Nil
17-10-2010	3	1,15,000	***9,90,000***	Registration required as aggregate value of taxable service has exceeded Rs. 9,00,000	Nil
13-01-2011	4	1,20,000	***11,10,000***		Value of taxable service after issue of Bill No. 4 is 11,10,000. Rs. 1,10,000 out of Rs. 1,20,000 is chargeable to service tax.
14-03-2011	5	1,35,000	12,45,000		Rs. 1,35,000 is chargeable to service tax

For the next F.Y. i.e. F.Y. 2011-12, Alpha Limited will not get benefit of notification of SSI (i.e. Small Service provider) Exemption and will be liable to pay service tax right from 01.04.2011.

Problem No. 22 :

Beta Limited starts providing a taxable service from 1st July, 2009. During the F.Y. 2009-10 it obtained service tax registration as aggregate value of taxable service exceeded Rs. 9,00,000 but did not pay any service tax as aggregate value of taxable service provided during the F.Y. was within Rs. 10,00,000.

Details of bills issued by Beta Limited during the F.Y. 2010-11 are as follows :

Date	Bill No.	Bill Amount
01-04-2010	1	5,00,000
15-08-2010	2	2,00,000
14-10-2010	3	2,50,000
18-01-2011	4	1,10,000
26-03-2011	5	2,45,000

Whether Beta Limited is liable to pay service tax for the F.Y. 2010-11?

Solution :

Date	Bill No.	Individual Bill Amount	Cumulative Bill Amount	Service Tax Payable
01-04-2009	1	5,00,000	5,00,000	Nil as because aggregate value of taxable services provided during the preceding financial year had not exceeded Rs. 10,00,000 and during current financial year aggregate value of taxable service till date has not exceeded Rs. 10,00,000.

Date	Bill No.	Individual Bill Amount	Cumulative Bill Amount	Service Tax Payable
15-08-2009	2	2,00,000	7,00,000	Nil as because aggregate value of taxable services provided during the preceding financial year had not exceeded Rs. 10,00,000 and during current financial year aggregate value of taxable service till date has not exceeded Rs. 10,00,000.
14-10-2009	3	2,50,000	9,50,000	Nil as because aggregate value of taxable services provided during the preceding financial year had not exceeded Rs. 10,00,000 and during current financial year aggregate value of taxable service till date has not exceeded Rs. 10,00,000.
18-01-2010	4	1,10,000	10,60,000	Value of taxable service after issue of Bill No. 4 is 10,60,000. Rs. 60,000 out of Rs. 1,10,000 is chargeable to service tax.
26-03-2010	5	2,45,000	13,05,000	Rs. 2,45,000 is chargeable to service tax

Problem No. 23 :

Ashiana Associates Private Limited provided architect services of the value of Rs. 100 lakh in the financial year 2009-10. For the month of April, 2010, their value of taxable services is Rs. 2,00,000. What is the due date for payment of service tax?

Solution :

Service tax paid by Ashiana Associates Private Limited in the financial year 2009-10 is Rs. 10,30,000 (10.30% of Rs. 1,00,00,000). As per Proviso to Rule 6(2) of the Service Tax Rules, 1994 an assessee shall deposit the service tax electronically through internet banking if he has paid the total service tax of Rs. 10 lakh or more (including the amount of service tax paid by utilisation of CENVAT credit) in the preceding financial year. Therefore, Ashiana Associates Private Limited is required to make the e-payment of service tax in the financial year 2010-11.

The due date for payment of service tax by a company is the 6th day of the month, if the duty is deposited electronically through internet banking immediately following the calendar month in which the payments are received, towards the value of taxable services. Hence, in the given case, Ashiana Associates Private Limited is required to make the e-payment of the service tax by 6th May, 2010.

Problem No. 24 :

Tarana Ltd. is engaged in providing consultancy in software engineering. It provided the taxable services of the value of Rs. 100 lakh in the financial year 2009-10. Tarana Ltd. is of the opinion that e-filing of return is optional for the assessees and it does not wish to file its return electronically. You are required to advice Tarana Ltd. whether it should file the return electronically or otherwise for the financial year 2010-11.

Solution :

The facility of e-filing of returns was earlier optional for the assessees. Proviso inserted to Rule 7(2) of the Service Tax Rules, 1994 has now made the electronic filing of returns mandatory for the assessee who has paid total service tax of Rs. 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year. Service tax paid by Tarana Ltd. in the financial year 2009-10 is Rs. 10,30,000 (10.30% of Rs. 1,00,00,000). Therefore, it is mandatory for Tarana Ltd. to file the return electronically for the financial year 2010-11.