TAXABLE SERVICES FOR IPCE, NOVEMBER, 2011

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

Notes :

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**