

PAPER – 8: INDIRECT TAX LAWS

PART – I : STATUTORY UPDATES

Significant amendments made between 1.7.2011 and 30.04.2012

A. EXCISE

I. AMENDMENTS IN THE CENVAT CREDIT RULES, 2004

1. Definition of capital goods amended [Rule 2(a)]

The amendments in the definition of the capital goods, effective from 01.04.2012, have been tabulated as under:-

S.No.	Prior to amendment	After the amendment
1.	Motor vehicles were not eligible as capital goods for the purposes of manufacture. However, motor vehicles used for providing the following taxable services were eligible as capital goods:- (i) Courier services (ii) Tour operator's services (iii) Rent-a-cab scheme operator's services (iv) Cargo handling services (v) Goods transport agency services (vi) Outdoor catering services (vii) Pandal or Shamiana services	Motor vehicles are now eligible as capital goods used in the factory of the manufacturer of the final products except the following types of motor vehicles:- (i) Motor vehicles for the transport of 10 or more persons, including the driver (ii) Motor cars and other motor vehicles principally designed for the transport of persons (other than those covered in (i) above), including station wagons and racing cars (iii) Motor vehicles for transport of goods (iv) Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars. Motor vehicles [mentioned in point (i) to (iv) above] are eligible as capital goods for providing the following taxable services:- (i) Courier services (ii) Tour operator's services (iii) Rent-a-cab scheme operator's services (iv) Cargo handling services (v) Goods transport agency services (vi) Outdoor catering services

		(vii) Pandal or Shamiana services
2.	CENVAT credit of components, spares and accessories of dumpers, tippers and motor vehicles was allowed only if dumpers, tippers and motor vehicles were eligible as capital goods.	CENVAT credit of components, spares and accessories of motor vehicles which are capital goods for the assessee is allowed.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

2. Definition of exempted goods under rule 2(d) and proviso to rule 3(1)(i) amended

The definition of exempted goods under rule 2(d) has been amended to include goods in respect of which exemption under entries at serial numbers 67 and 128* of *Notification No. 12/2012-CE dated 17.03.2012* is available.

Further, proviso to rule 3(1)(i) has also been accordingly amended to provide that CENVAT credit of excise duty paid on aforementioned goods shall not be available.

[Notification No. 21/2012 – CE (N.T.) dated 27.03.2012]

**Note: Entries at serial numbers 67 and 128 cover the following goods:-*

S. No.	Particulars
67	Coal, briquettes, ovoids and similar solid fuels manufactured from coal
128	All goods mentioned in Chapter 31 (fertilizers), other than those which are clearly not to be used as fertilisers

3. Definition of input service amended [Rule 2(l)]

Prior to amendment

Earlier, input service excluded following specified services, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods:-

- General insurance business
- Rent-a-cab scheme operator's services
- Service Stations' services
- Supply of tangible goods services

However, the aforesaid services were eligible as input services only when they were used for providing taxable services for which the credit on motor vehicle was available as capital goods (refer point 1. above).

After the amendment

The definition of input service has been amended to provide as follows:-

- (i) Following services provided in relation to a motor vehicle which is not a capital good are excluded from the definition of the input service:-

- Supply of tangible goods services
- Rent-a-cab scheme operator's services

It implies that the credit of the service tax paid on supply of tangible goods through the motor vehicles and hiring of the motor vehicles, where such motor vehicles are eligible as capital goods, is available.

- (ii) Following services provided in relation to a motor vehicle which is not a capital good are excluded from the definition of the input service:-

- General insurance business
- Service Stations' services

It implies that the credit of the service tax paid on insurance and repair etc. of the motor vehicles which are eligible as capital goods, is available.

Exceptions:-

Credit of the service tax paid on insurance and repair etc. of the motor vehicle, even if not a capital good, is available to the following:-

- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by him; or
- (b) a general insurance service provider in respect of a motor vehicle insured or reinsured by him.

Analysis

It can be inferred that:-

- (a) A manufacturer of motor vehicle can avail credit of the service tax paid on the in-transit insurance and on the repair of the motor vehicles manufactured by him.
- (b) A motor insurance company can avail credit of the service tax paid on the re-insurance and third party insurance and repair of the motor vehicles insured /re-insured by them.

The aforesaid amendments are effective from 01.04.2012.

[Notification No. 18/2012-CE (NT) dated 17.03.2012 as amended by Notification No. 21/2012 – CE (N.T.) dated 27.03.2012]

4. Amount payable on capital goods removed after being used as capital goods or as scrap or waste [Third proviso to 3(5) and rule 3(5A)]

Prior to amendment	After the amendment
Capital goods removed after being used as capital goods Third proviso to 3(5) provided that if the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer/provider of output services shall pay an amount equal to the CENVAT credit taken on the said capital goods reduced by the certain specified percentage points¹ for each quarter of a year or part thereof from the date of taking the CENVAT credit.	Capital goods removed after being used as capital goods or scrap or waste Third proviso to 3(5) has been omitted and rule 3(5A) has been substituted with the new rule 3(5A) which provides as follows:- If the capital goods, on which CENVAT credit has been taken, are removed after being used, whether as capital goods or as scrap or waste, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the certain specified percentage points¹ (same rates as prescribed earlier) for each quarter of a year or part thereof from the date of taking the CENVAT credit.
Capital goods removed as scrap or waste Rule 3(5A) stipulated that if the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.	However, if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

In other words, after the amendment:-

- (a) Capital goods removed after being used as capital goods

The provision relating to the amount payable on capital goods removed after being used as capital goods is still the same.

- (b) Capital goods removed as scrap or waste

If the capital goods are cleared as waste and scrap, the manufacturer/provider of output services shall pay an amount equal to:-

- (i) CENVAT Credit taken on the said capital goods reduced by the percentage points¹ calculated by straight line method for each quarter of a year or part thereof from the date of taking the CENVAT Credit.

or

- (ii) Duty leviable on transaction value.

whichever is higher.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

¹*Specified percentage points are as follows:-*

(a) *For computers and computer peripherals:*

for each quarter in the first year @ 10%

for each quarter in the second year @ 8%

for each quarter in the third year @5%

for each quarter in the fourth and fifth year @1%

(b) *For capital goods other than computers & computer peripherals @ 2.5% for each quarter.*

5. Credit of capital goods and inputs to be allowed to service provider without bringing them into premises subject to due documentation [Second proviso to rule 4(1) and fourth proviso to rule 4(2)(a) inserted]

Prior to amendment

Earlier, credit on capital goods and inputs could be taken only after they were brought to the premises of the service provider.

Amendment made by *Notification No. 18/2012-CE (NT) dated 17.03.2012*

Second proviso to rule 4(1) and fourth proviso to rule 4(2)(a) have been newly inserted to allow credit of capital goods and inputs without bringing them into premises subject to due documentation regarding their delivery and location.

Second proviso to rule 4(1) stipulates as follows:-

CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.

Fourth proviso to rule 4(2) stipulates as follows:-

CENVAT credit in respect of capital goods may be taken by the provider of output service when the capital goods are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the capital goods.

The aforesaid amendment is effective from 01.04.2012.

6. Refund of CENVAT credit [Rule 5]

Refund scheme prescribed under rule 5 has been simplified to a larger extent by substituting with a new rule. The new scheme does not require a direct correlation between exports and input services/inputs used in such exports. Duties or taxes paid on any goods or services that qualify as inputs/input services will be entitled to be refunded in the ratio of the export turnover to total turnover.

The scheme is as under:-

A manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette:

Refund amount is as follows:-

$$\left[\frac{\text{Export turnover of goods} + \text{Export turnover of services}}{\text{Total Turnover}} \times \text{Net CENVAT credit} \right]$$

This rule shall apply to exports made on or after 01.04.2012.

Meaning of various terms

- (A) Refund amount means the maximum refund that is admissible;
- (B) Net CENVAT credit means total CENVAT credit availed on inputs and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub-rule (5C) of rule 3, during the relevant period;
- (C) Export turnover of goods means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;
- (D) Export turnover of services means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

- (E) Total turnover means sum total of the value of -
 - (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
 - (b) export turnover of services determined in terms of clause (D) of subrule (1) above and the value of all other services, during the relevant period; and
 - (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.
- (F) Export service means a service which is provided as per the provisions of Export of Services Rules, 2005, whether the payment is received or not.
- (G) Relevant period means the period for which the claim is filed.

However, the refund may be claimed under the erstwhile rule 5 till 31.03.2013.

Further, no refund of credit shall be allowed if the manufacturer or provider of output service avails the drawback allowed under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of Services Rules, 2005 in respect of such tax.

Value of services

For the purposes of this rule, the value of services, shall be determined in the same manner as the value for the purposes of sub-rule (3) and (3A) of rule 6 is determined.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

7. Amendments in rule 6

- (i) Rate for CENVAT credit reversal for exempted goods and services raised from 5% to 6% [Rule 6(3)]

Prior to amendment

Earlier, as per rule 6(3)(i), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, had the option to pay an amount equal to 5% of the value of the exempted goods and exempted services.

Amendment made by *Notification No. 18/2012-CE (NT) dated 17.03.2012*

Since the rate of excise duty and service tax has been increased from 10% to 12%, the aforesaid rate of CENVAT reversal for exempted goods and services has also been revised from 5% to 6% in rule 6(3)(i).

The rate has been increased to 6% in second proviso to rule 6(3) also.

- (ii) In case of life insurance or management of ULIPs, obligation to pay every month an amount equal to 20% of the credit availed has been dispensed [Rule 6(3C)]

Earlier, in case of services relating to life insurance or management of ULIPs, provider of output service was obligated to pay every month an amount equal to 20% of the credit availed on inputs and input services in that month.

Now, rule 6(3C) has been omitted vide *Notification No. 18/2012-CE (NT) dated 17.03.2012* and such obligation has been dispensed with.

Accordingly, reference to rule 6(3C) in Explanation-II and Explanation-III has also been omitted.

- (iii) Explanation I after rule 6(3D) amended

In clause (b), for the brackets figures and letter "(7), (7B)" the brackets, figures and letters "(7),(7A),(7B)" have been substituted.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

All the aforesaid amendments have been made effective from 01.04.2012.

8. Revised manner of distribution of credit by input service distributor [Rule 7]

The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:—

- (a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;
- (b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;
- (c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and
- (d) credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates.

Point to be noted:-

1. Unit includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.
2. Total turnover shall be determined in the same manner as determined under rule 5.

The aforesaid amendment is effective from 01.04.2012.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

9. Credit availment allowed on the tax payment challan in case of payment of service tax by ALL service receivers on reverse charge [Rule 9(1)(e)]

Prior to amendment

Earlier rule 9(1)(e) provided that the CENVAT credit may be taken by the manufacturer or the provider of output service or input service distributor on the basis of a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994. Hence, earlier, all service receivers on reverse charge were not included under this clause.

Amendment made by *Notification No. 18/2012-CE (NT) dated 17.03.2012*

Rule 9(1)(e) has been amended to allow availment of credit on the tax payment challan in case of payment of service tax by ALL service receivers on reverse charge.

It reads under:-

CENVAT credit may be taken by the manufacturer or the provider of output service or input service distributor on the basis of a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax.

The aforesaid amendment is effective from 01.04.2012.

10. New rule 10A relating to transfer of CENVAT credit of SAD inserted

A manufacturer or producer of final products, having more than one registered premises, for each of which registration under the Central Excise Rules, 2002 has been obtained on the basis of a common Permanent Account Number under the Income-tax Act, 1961, may transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises by—

- (i) making an entry for such transfer in the documents maintained under rule 9;
- (ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit and receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i), and such recipient premises may take CENVAT credit on the basis of the transfer challan.

However, nothing contained in this sub-rule shall apply if the transferring and recipient registered premises are availing the benefit of certain specified notifications.

The manufacturer or producer shall submit the monthly return, as specified under these rules, separately in respect of transferring and recipient registered premises.

The aforesaid amendment is effective from 01.04.2012.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

11. Procedure and facilities for LTU not applicable to unit availing exemption under Notification No. 01/2010-CE [Rule 12A]

Rule 12A(1) stipulates that a Large Tax Payer can transfer inputs and capital goods from any of his registered premises to his other registered premises for further use in the manufacture or production of final products in recipient premises. Third proviso to rule 12A(1) has been amended to provide that if the recipient premises is availing benefit of *Notification No.-01/2010-CE dated 06.02.2010*, it will not get the benefit mentioned in this sub-rule.

Rule 12A(4) stipulates that a Large Tax Payer can transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises. Fourth proviso to rule 12A(4) has been amended to provide that if the recipient premises is availing benefit of *Notification No.-01/2010-CE dated 06.02.2010*, it will not get the benefit mentioned in this sub-rule.

The aforesaid amendment is effective from 01.04.2012.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

12. Rule 14 amended

Prior to amendment

Earlier, interest under rule 14 was payable in case where the CENVAT credit has been taken *OR* utilized wrongly or has been erroneously refunded.

After the amendment

The Supreme Court, in case of *UOI v. Ind-Swift Laboratories Ltd.* 2011 (265) E.L.T. 3 (S.C.) held that if the provision of rule 14 is read as a whole, there is no reason to read the word “OR” in between the expressions ‘taken or utilized wrongly or has been erroneously refunded’ as the word “AND”. On the happening of any of the three circumstances, such credit becomes recoverable along with interest. However, levying interest on wrong CENVAT credit taken, even though not utilized, seem to be unjustified.

Consequently, rule 14 has been amended to provide that interest is payable in either of the following two cases:-

(i) CENVAT credit has been taken *AND* utilized wrongly

or

(ii) CENVAT credit has been erroneously refunded.

The aforesaid amendment is effective from 01.04.2012.

[Notification No. 18/2012-CE (NT) dated 17.03.2012]

13. Rule 12 amended

In rule 12, for the words “notwithstanding anything contained in these rules”, the words “notwithstanding anything contained in these rules but subject to proviso to rule 3(1)(i)” has been substituted.

[Notification No. 01/2012-CE (N.T.) dated 09.02.2012]

II. AMENDMENTS IN THE CENTRAL EXCISE RULES, 2002

1. Option to authorize job-worker to pay duty in case of readymade garments and made-up articles of textiles withdrawn [Rule 4(1A)]

In the garment and made up industry, goods are being manufactured from several job-workers. The person getting the goods manufactured on his behalf may or may not, himself, possess any manufacturing facility.

Central Excise Rules were amended to incorporate sub-rule (1A) in rule 4 vide *Notification No. 4/2011 CE (NT) dated 01.03.2011* to prescribe that in case of readymade garments and made-up articles of textiles falling under Chapter 61 or 62 or 63 of the First Schedule to the Tariff Act, the liability to pay duty and comply with central excise procedures would be on the person on whose behalf the goods are manufactured by job-

workers. Alternatively, an option was given to merchant manufacturer to authorize the job-worker to obtain registration and comply with all formalities of Central Excise including payment of duty.

Sub-rule (1A) has been further amended to withdraw the option available to merchant manufacturer to authorize the job-worker to pay duty and comply with all the procedures. Therefore, now only the merchant manufacturer can pay duty in such cases.

In a case where any merchant manufacturer has already authorized its job-worker to pay the duty under the provisions of sub-rule (1A) as it stood prior to the publication of this notification, he will have to obtain registration and comply with other related provisions within a period of 30 days from 28.07.2011.

[Notification No. 19/2011 CE (NT) dated 28.07.2011]

2. Rule 12AA of the CENVAT Credit Rules, 2004 renumbered as 12AAA and rule 12CC of the Central Excise Rules, 2002 renumbered as 12CCC

Rule 12AA of the CENVAT Credit Rules, 2004 empowering Central Government to impose restriction on utilization of CENVAT credit in certain type of case has been substituted with the new rule 12AAA. The provisions of the erstwhile rule 12AA and new rule 12AAA are same.

Further, rule 12CC of the Central Excise Rules, 2002 empowering Central Government to impose restriction in certain type of case has been substituted with the new rule 12CCC. The provisions of the erstwhile rule 12CC and new rule 12CCC are same.

1. In exercise of the powers conferred under the two aforesaid rules, Central Government hereby declares that where a manufacturer, first stage or second stage dealer, or an exporter including a merchant exporter is prima facie found to be knowingly involved in any of the following,-
 - (a) removal of goods without the cover of an invoice and without payment of duty;
 - (b) removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;
 - (c) taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;
 - (d) taking of CENVAT Credit on invoices or other documents which a person has reasons to believe as not genuine;
 - (e) issuing duty of excise invoice without delivery of goods specified in the said invoice;
 - (f) claiming of refund or rebate based on the duty of excise paid invoice or other documents which a person has reason to believe as not genuine;
 - (g) removal of inputs as such on which Cenvat credit has been taken, without

paying an amount equal to credit availed on such inputs in terms of sub-rule (5) of rule 3 of the Cenvat Credit Rules, 2004,

an officer authorized by the Central Board of Excise and Customs may order for withdrawal of facilities or impose the restrictions as specified below.

2. Facilities to be withdrawn and imposition of restrictions.-

- (1) Where a manufacturer is prima facie found to be knowingly involved in committing the offences specified in point 1. above, the officer authorized by the Central Board of Excise and Customs may impose following restrictions on the facilities, namely:-
 - (i) the monthly payment of duty of excise may be withdrawn and the assessee shall be required to pay duty of excise for each consignment at the time of removal of goods;
 - (ii) payment of duty of excise by utilisation of CENVAT credit may be restricted and the assessee shall be required to pay duty of excise without utilising the CENVAT credit;
 - (iii) the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which Cenvat credit has not been taken;
 - (iv) the assessee may be required to intimate the Superintendent of Central Excise regarding receipt of principal inputs in the factory on which Cenvat credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order:

However, where a person is found to be knowingly involved in committing any one or more type of offences as specified in point 1. above for the second time or subsequently, every removal of goods from his factory may be ordered to be under an invoice which shall be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the said goods are removed from the factory or warehouse.

Explanation.- For the purposes of point 2., it is clarified that-

- (i) a person against whom the order has been passed may continue to take CENVAT credit, however, he would not be able to utilize the credit for payment of duty during the period specified in the said order.
- (ii) if the assessee commits any offence specified in point 1. above for the second time or subsequently, the officer authorized by the Central Board of Excise and Customs may impose the restriction specified in clauses (i) and (ii).
- (iii) "principal inputs", means any input which is used in the manufacture of final

products where the cost of such input constitutes not less than 10% of the total cost of raw materials for the manufacture of unit quantity of a given final products.

- (2) Where a first stage or second stage dealer is found to be knowingly involved in committing the type of offence specified at clauses (d) or (e) of point 1 above, the officer authorized by the Central Board of Excise and Customs may order suspension for a specified period, the registration granted under rule 9 of the Central Excise Rules 2002.
 - (3) During the period of suspension, the said dealer shall not issue any Central Excise invoice.
However, he may continue his business and issue sales invoices without showing duty of excise in the invoice and no CENVAT credit shall be admissible to the recipient of goods under such invoice.
 - (4) Where a merchant exporter is found to be knowingly involved in committing the type of offence specified in clause (f) of point 1 above, the officer authorized by the Central Board of Excise and Customs may order withdrawal of the self sealing facility for export consignment and each export consignment shall be examined and sealed by the jurisdictional Central Excise Officer:
 - (5) If a manufacturer, first stage dealer or second stage dealer or an exporter does anything specified in clause (f) of point 1 above, the officer authorized by the Central Board of Excise and Customs may order withdrawal of the other facility available to them.
3. **Monetary limit:** The provisions of this notification shall be applicable only in a case where the duty of excise or CENVAT Credit alleged to be involved in anything specified in point 1. above exceeds rupees ten lakhs.
4. **Procedure:-**
- (1) The Commissioner of Central Excise or Additional Director General of Central Excise Intelligence, as the case may be, after examination of records and other evidence, and after satisfying himself that the person has knowingly committed the offence as specified in point 1. above, may forward a proposal to the Chief Commissioner or Director General of Central Excise Intelligence, as the case may be, to withdraw the facilities and impose restriction during or for such period, within 30 days of the detection of the case, as far as possible.
 - (2) The Chief Commissioner of Central Excise or Director General of Central Excise Intelligence, as the case may be, shall examine the said proposal and after satisfying himself that the records and evidence relied upon in the said proposal are sufficient to form a reasonable belief that a person has knowingly done or contravened anything specified in point 1. above, may forward the proposal along with his recommendations to the Central Board of Excise and

Customs:

However, the Chief Commissioner of Central Excise or Director General of Central Excise Intelligence, before forwarding his recommendations, shall give an opportunity of being heard to the person against whom the proceedings have been initiated and shall take into account any representation made by such person before he forwards his recommendations to the Central Board of Excise and Customs.

- (3) An officer authorized by the Central Board of Excise and Customs shall examine the recommendations received from the Chief Commissioner of Central Excise or Director General of Central Excise Intelligence and issue an order specifying the type of facilities to be withdrawn or type of restrictions imposed, along with the period for which said facilities will not be available or the period for which the restrictions shall be operative.

[Notification No. 3-5/2012-CE (NT) all dated 12.03.2012]

3. Option available to job-worker to pay duty and comply with all the procedures withdrawn [Rule 12AA of the Central Excise Rules, 2002]

As per rule 12AA of the Central Excise Rules, 2002, in case of article of jewellery or other articles of precious metals falling under Heading 7113 or 7114 manufactured on job-work basis, merchant manufacturer would obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee. However, proviso to sub-rule (1) to rule 12AA provided an option available to job-worker to pay duty and comply with all the procedures.

However, now proviso to sub-rule (1) to rule 12AA has been omitted to withdraw the option available to job-worker to pay duty and comply with all the procedures. Therefore, now only the merchant manufacturer can pay duty in such cases.

Further, explanation 2 to rule 12AA explaining the meaning of article of jewellery has also been omitted.

[Notification No. 8/2012-CE (NT) dated 17.03.2012]

4. Rule 4(7) amended

Finance Act, 2011 had substituted erstwhile section 11AA and section 11AB with a new section 11AA. Hence, reference to section 11AB in rule 4(7) has been omitted.

[Notification No.22/2012-CE (N.T.) dated 30.03.2012]

5. Explanation to rule 11 amended

In explanation to rule 11, "CENVAT Credit Rules, 2002" has been substituted with "CENVAT Credit Rules, 2004".

[Notification No.22/2012-CE (N.T.) dated 30.03.2012]

6. Documents to be produced on demand under rule 22(3) to Cost Accountant/Chartered Accountant as nominated under section 14A/14AA also

Prior to amendment

Earlier under rule 22(3), assessee, first stage dealer and second stage dealer were required to produce, on demand, the records maintained by him in respect of accounting of transactions, all financial statements, etc. as required under rule 22(2), cost audit reports and income tax audit reports to the following persons:-

- (i) Officer empowered under sub-rule (1) or
- (ii) Audit party deputed by the Commissioner/Comptroller and Auditor General of India for the scrutiny by the officer/audit party.

After the amendment

Now, the said documents need to be produced on demand, to the following persons:-

- (i) Officer empowered under sub-rule (1) or
- (ii) Audit party deputed by the Commissioner/Comptroller and Auditor General of India
- (iii) *Cost Accountant/ Chartered Accountant as nominated under section 14A/14AA of the Act*

for the scrutiny by the officer/audit party/cost accountant/chartered accountant *within the time-limit specified by them.*

[Notification No.22/2012-CE (N.T.) dated 30.03.2012]

7. Fourth proviso to rule 12(1) amended

Prior to amendment

Where an assessee is availing the exemption under *Notification No. 1/2011-CE dated 01.03.2011* and does not manufacture any other excisable goods, he shall file a quarterly return in the specified form, of production and removal of goods and other relevant particulars, within 10 days after the close of the quarter to which the return relates [Fourth proviso to rule 12(1)].

After the amendment

Fourth proviso to rule 12(1) has been amended to extend the aforesaid relaxation of filing the quarterly return to an assessee availing exemption in respect of goods falling under Sl.No.67, 128, 199(I) and 200(I) [mentioned below], of *Notification No. 12/2012-CE dated 17.03.2012.*

S. No.	Particulars
67	Coal, briquettes, ovoids and similar solid fuels manufactured from coal
128	All goods mentioned in Chapter 31 (fertilizers), other than those which are

	clearly not to be used as fertilisers
199(I)	Articles of jewellery under heading 7113
200(I)	Articles of goldsmiths' or silversmiths' wares of precious metal or of metal clad with precious metal, bearing a brand name under heading 7114

[Notification No. 23/2012-CE (N.T.) dated 18.04.2012]

III. OTHER AMENDMENTS

1. CBEC notifies new Form ER 1 and ER-3

The Central Board of Excise and Customs has notified new Form ER-1 and Form ER-3.

Form ER-1 is the monthly return for production and removal of goods and other relevant particulars and CENVAT credit.

Form ER-3 is the quarterly return for production and removal of goods and other relevant particulars and CENVAT credit, by an assessee eligible to avail of the exemption under a notification based on the value of clearances in a financial year.

The new forms would be effective from 1st October, 2011. SSI unit shall file return in Form ER-3 for the quarter beginning from the 1st October, 2011 and ending with the 31st December, 2011.

[Notification No. 16/2011- CE (NT) dated 18.07.2011 as amended by Notification No. 20/2011 CE (NT) dated 13.09.2011 & Notification No. 31/2011-CE dated 30.12.2011]

2. Application for registering a new factory after opting as large taxpayer to be made to Assistant Commissioner /Deputy Commissioner in place of Chief Commissioner

Notification No. 20/2006 - CE (N.T.) dated 30.09.2006 specifies the conditions to be satisfied and procedures to be followed by a person to be eligible to opt as large taxpayer. One of the conditions laid down by the said notification provided that where a new factory or service provider, input credit distributor or first or second stage dealer becomes liable to be registered, after opting as large taxpayer, the application for such new registration ought to be made before the Chief Commissioner of Central Excise, Large Taxpayer Unit.

The said condition has been amended so as to enable the submission of applications of such new registrations before the Assistant Commissioner /Deputy Commissioner of Central Excise, Large Taxpayer Unit, in case of registration under the Central Excise Act, 1944 and the Superintendent, Large Taxpayer Unit, in case of registration under the service tax, as the case may be.

[Notification No. 17/2011- CE (NT) dated 18.07.2011]

3. E-Filing of Excise Returns and Statements mandatory for all assesseees

Central Excise Rules, 2002 have been amended to provide that the returns and statements prescribed under rule 12 will have to be filed electronically by all the

assesseees irrespective of the duty paid in the preceding year. Monthly Return for production and removal of goods (ER-1), Quarterly Return (ER-3), Annual Financial Information Statement (ER-4) are some of the returns and statements prescribed under Rule 12.

Assesseees availing exemption under *Notification No. 49/2003 CE dated the 10.06.2003* or *Notification No. 50/2003 CE dated 10.06.2003* have been exempted from the requirement of e-filing of the returns prescribed under rule 12. *Notification No. 49/2003 CE dated 10.06.2003* exempts certain goods when cleared from a unit in the State of Uttaranchal or Himachal Pradesh. *Notification No. 50/2003 CE dated 10.06.2003* exempts certain goods when cleared from a unit located in the Industrial Growth Centre or Industrial Infrastructure Development Centre or Export Promotion Industrial Park or Industrial Estate or Industrial Area or Commercial Estate or Scheme Area

Hundred per cent Export Oriented Undertakings will also be required to submit the monthly excise return (ER-2) electronically irrespective of the duty paid in the preceding year.

Similar amendment has been made in CENVAT Credit Rules, 2004 to the effect that the assesseees will now have to file the annual declaration in respect of principal inputs (ER-5) and the monthly return of information relating to principal inputs (ER-6) electronically irrespective of the duty paid in the preceding year.

The amendments have become effective from 01.10.2011.

[Notification No. 21 & 22/2011 CE (NT) both dated 14.09.2011]

4. Export procedures for Nepal amended

With effect from 01.03.2012, the procedures prescribed for export under claim for rebate vide *Notification No. 19/2004 CE (NT) dated 06.09.2004* and export without payment of duty under bond vide *Notifications Nos. 42 to 44/2001 CE (NT) all dated 26.06.2001* would apply to Nepal as well. This has been done in view of the revised treaty between India and Nepal. CBEC has issued *Notifications Nos. 24-29 CE (NT) all dated 05.12.2011* to give effect to this amendment.

As per the earlier provisions, procedures prescribed for export under claim for rebate vide *Notification No. 19/2004 CE (NT) dated 06.09.2004* and export without payment of duty under bond vide *Notifications Nos. 42 to 44/2001 CE (NT) all dated 26.06.2001* applied to countries other than Nepal and Bhutan. For Nepal and Bhutan separate procedures were prescribed for export under claim for rebate vide *Notification No. 20/2004 CE (NT) dated 06.09.2004* and export without payment of duty under bond vide *Notification No. 45/2001 CE (NT) dated 26.06.2001*.

[Notifications Nos. 24-29 CE (NT) all dated 05.12.2011]

5. Section 11AB substituted with section 11AA

Finance Act, 2011 had substituted erstwhile section 11AA and Section 11AB with a new section 11AA. Hence, reference to section 11AB at the following places has been replaced with section 11AA:-

S.No.	Rules/Notification No.s	
1.	Central Excise Rules, 2002	Rule 8(3)
		Rule 8A(3)
		Rule 12BB
2.	Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001	Rule 6
3.	Notification No. 45/2001-CE (NT) dated 26.06.2001	
4.	Notification No. 31/2007-CE (NT) dated 02.08.2007	
5.	Notification No. 42/2001-CE (NT) dated 26.06.2001	

[Notification No. 8,13,14,15 & 16/2012-CE (NT) all dated 17.03.2012]

6. In respect of goods received at concessional rate of duty, instead of monthly return quarterly return needs to be filed

Rule 5 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has been amended to, *inter alia*, provide that the manufacturer, receiving subject goods, shall submit a quarterly return instead of a monthly return.

[Notification No. 13/2012-CE (NT) dated 17.03.2012]

IV. CLARIFICATIONS

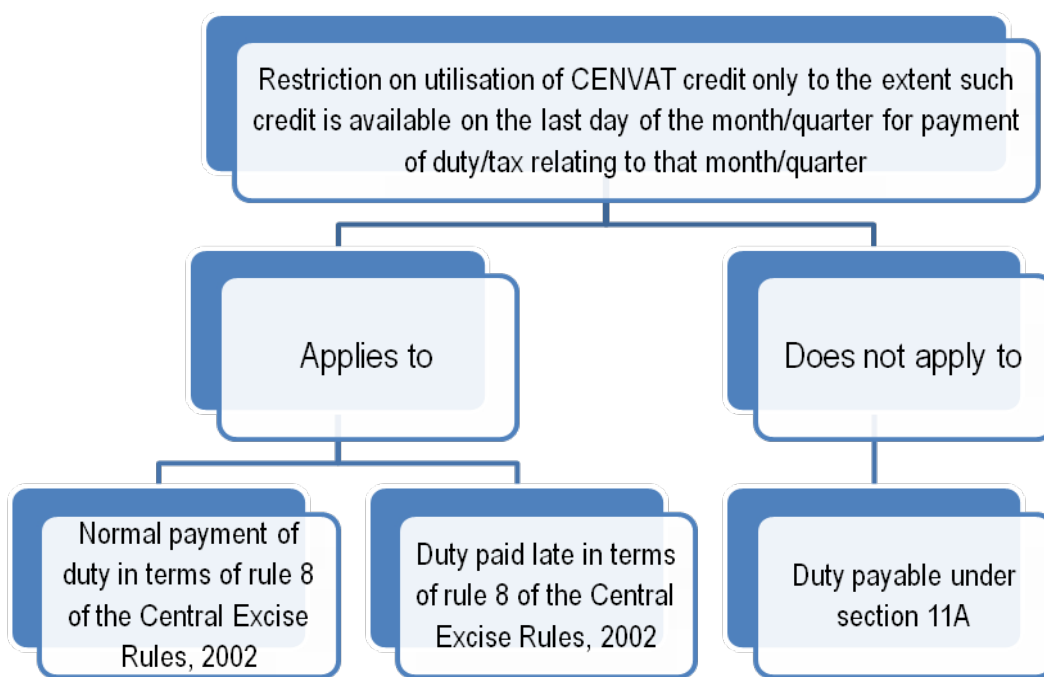
1. Arrears of duty under section 11A can be paid by utilizing the CENVAT credit which has accrued subsequent to the period to which the arrears pertained.

Query:

As per the proviso to rule 3(4) of the CENVAT Credit Rules, 2004, while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be.

In light of the aforesaid provisions, whether the arrears of duty can be paid by utilizing the CENVAT credit which has accrued subsequent to the period to which the arrears pertained.

Clarification:



CBEC has clarified that a harmonious reading of rule 8 of the Central Excise Rules, 2002 and first proviso to rule 3(4) of the CENVAT Credit Rules, 2004 indicates that the restriction with regard to the utilization of CENVAT credit is relating to the normal payment of duty in terms of rule 8 of the Central Excise Rules, 2002, where duty for a particular month or quarter is to be discharged by the 5th of the next month or duty paid late in terms of rule 8.

Unlike rule 8 where the duty is paid after self-determination, under section 11A, duty is determined by the Central Excise Officer and the payment is mandated after such determination. Further, there is no time limit prescribed under section 11A i.e., monthly or quarterly unlike the date prescribed under rule 8. Therefore, the restriction on the utilization of the CENVAT credit is not applicable to the demands confirmed under Section 11A of the Central Excise Act, 1944.

[Circular No. 962/05/2012-CX dated 28.03.2012]

2. Classification of structural components of Boiler and admissibility of CENVAT credit on these structural components

Issue: Classification of structural parts/components of Boiler and admissibility of CENVAT credit on these parts/components to the buyers of the Boilers.

Clarification:

CBEC vide *Circular No 964/07/2012-CX dated 02.04.2012* clarified that those structural components which are to be used essentially as a part of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff. It is further clarified that since these structural components are nothing but the parts and accessories of the Boiler, they would be covered by the definition of inputs under rule 2(k)(iii) of the CENVAT Credit rules, 2004 (i.e. all goods for generation of electricity & steam).

Further these structural components shall not be hit by the exclusion clause to the said definition of inputs, as these are not used for laying of foundation or making of structures for support of capital goods, but are essentially the part of said Boilers.

3. Monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme Court revised by CBEC

With effect from 01.09.2011, the Central Board of Excise & Customs has revised monetary limits below which appeal should not be filed in the Tribunal, High Court and the Supreme Court as under:

Sl.No.	Appellate Forum	Monetary limit
1.	CESTAT	₹ 5,00,000/-
2.	High Courts	₹ 10,00,000/-
3.	Supreme Court	₹ 25,00,000/-

The Board has clarified that for ascertaining whether a matter would be covered within or without the aforementioned limits, the determinative element would be duty/tax under dispute e.g, in a case involving duty of ₹ 5 lakhs or below with equal penalty and interest, as the case may be, no appeal can be filed in the Tribunal. Similarly, no appeal would be filed in the High Court if the duty involved does not exceed ₹ 10 lakhs with or without penalty and interest.

Also, the Commissionerates have been instructed not to send proposal to the Board for filing Civil Appeal or Special Leave Petition in the Supreme Court in a case involving duty up to ₹ 25 lakhs, whether with penalty and interest or otherwise. However, where the imposition of penalty is the subject matter of dispute and the said penalty exceeds the limit prescribed, then the matter could be litigated further. Similarly, where the subject matter of dispute is the demand of interest and the amount of interest exceeds the prescribed limit, then the matter may require further litigation.

Adverse judgments relating to the following would have to be contested irrespective of the amount involved:

- (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- (b) Where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires.

Following queries related with application of monetary limits have been clarified by the Board as under:

Issue: Whether duty involved mentioned in the Instruction dated 20.10.2010 refers to duty outstanding to be collected or the total duty demanded for deciding the threshold limit prescribed therein?

Clarification: In a case where a part of the duty demanded is not disputed and is paid and the outstanding duty under dispute is less than the monetary limit prescribed by the Board, no appeal shall be filed. In other words, monetary limit shall apply on the disputed duty and not on the total duty demanded in a case.

Issue: Whether monetary limits would apply to cases of refund?

Clarification: It is clarified that the monetary limits being prescribed by the Board would apply to cases of refund as well.

Issue: Whether applications being filed by the Department before office of Joint Secretary (Revision Application) would also be covered under the stipulation of monetary limits?

Clarification: The limit specified herein will not be applicable to application filed before the Joint Secretary (Revision Application).

Issue: Whether exclusion of audit objections mentioned in para 6(c) of Instruction dated 20.10.2010 would cover internal audit objection cases also or whether they would be limited to cases of revenue audit alone?

Clarification: The intention was to apply the exclusion clause mentioned at para 6(c) only to disputes arising out of revenue audit objections accepted by the Department. It has now been decided to delete the said exclusion clause. Therefore, in all cases of audit objections accepted by the Department, while protective demands may continue to be issued but the same would be subjected to the monetary limits for filing appeal in the Tribunal, High Courts and the Supreme Court.

[F.No.390/Misc./163/2010-JC dated 17.08.2011]

4. Power of Adjudication Revised for Additional Commissioners

CBEC has revised the monetary limit for adjudication for Additional Commissioners under section 11A and section 33 of the Central Excise Act, 1944. They can now adjudicate the cases with a monetary limit from above ₹ 5 Lac and upto ₹ 50 Lac. Earlier the limit was above ₹ 20 Lac and upto ₹ 50 Lac. As a result of this amendment a uniform monetary limit i.e., above ₹ 5 Lac & upto ₹ 50 Lac has been fixed for both Additional Commissioners and the Joint Commissioners.

[Circular No. 957/18/2011-CX-3 dated 25.10.2011]

B. SERVICE TAX**Rate of service tax restored to 12%**

As per section 66, rate of service tax is 12% of the value of taxable services. However, in February 2009, the rate of service tax was reduced to 10% vide *Notification No. 8/2009 ST dated 24.02.2009*.

With effect from 01.04.2012, *Notification No. 02/2012-ST dated 17.03.2012* rescinded the said notification and resultantly, the rate of service tax has again been restored to 12%.

I. AMENDMENTS IN THE SERVICE TAX RULES, 1994**1. All assesseees to file Service Tax Returns electronically**

Service Tax Rules, 1994 have been amended to provide that every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year. The amendment would be effective from October 1, 2011.

Earlier, electronic filing of service tax returns was mandatory for the assesseees who had paid service tax of ₹ 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

[Notification No. 43/2011 ST dated 25.08.2011]

Procedure for electronic filing of Central Excise and Service Tax returns and for electronic payment of excise duty and service tax

Central Excise and Service Tax returns, the DG (Systems) has issued comprehensive instructions outlining the procedure for electronic filing of Central Excise duty and Service Tax returns and electronic payment of taxes under ACES. The said instructions outline the registration process for new assesseees, existing assesseees, non-assesseees and for Large Taxpayers Units, steps for preparing and filing of return, use of XML Schema for filing dealer's return, procedure for obtaining acknowledgement of e-filed return, procedure for e-payment etc.

[Circular No. 956/17/2011 CX dated 28.09.2011]

2. Amendments made by *Notification No. 3/2012-ST dated 17.03.2012* (effective from 01.04.2012)**(a) Partnership firm defined [Rule 2(cd)]**

Rule 2(cd) defines partnership firm as follows:-

Partnership firm includes limited liability partnership.

(b) Amendments in rule 4A**(i) Time limit for issue of invoice/ bill/ challan raised to 30 days [Sub-rule (1)]****Prior to amendment**

Earlier, under rule 4A(1), an invoice has to be issued within 14 days from the date of:-

- (i) completion of such taxable service

or

- (ii) receipt of any payment towards the value of such taxable service
whichever is earlier.

After the amendment

Rule 4A(1) has been amended to increase the time-limit for issuance of invoice from 14 days to 30 days.

(ii) Invoice to be issued within 45 days in case of banking and other financial institution including NBFC [Fourth proviso to rule 4A inserted]

The time-limit for issuance of invoice, bill or challan, as the case may be, shall be 45 days in case where the service provider is:

- (i) A banking company
(ii) A financial institution including a non-banking financial company
(iii) Any other body corporate or any other person

providing service in relation to banking and other financial services and such service provider provides service to any other person.

(c) Amendments in rule 6**(i) Third proviso to sub-rule (1) inserted**

Sub-rule (1) of rule 6 specifies the time-limit for payment of service tax in the month of quarter, as the case may be, in which the service is deemed to be provided as per the Point of Taxation Rules, 2011. Third proviso to sub-rule (1) has been inserted which provides as follows-

In case of taxable services covered under rule 3(1) of the Export of Services Rules, 2005, this sub-rule shall not apply subject to the condition that the payment is received within the period specified by the Reserve Bank of India, including such extended period as may be allowed from time to time.

Implication of the amendment

The point of taxation in case of export of services shall be the date of payment.

- (ii) Individuals/partnership firms with aggregate value of taxable services of ₹ 50 lakh or less in previous year allowed to pay service tax on payment basis in current year upto a total of ₹ 50 lakh [Fourth proviso to sub-rule (1) inserted]

In case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, the due dates for payment of service tax on taxable services provided or to be provided by him up to a total of ₹ 50 lakh in the current financial year, at the option of service provider, is as follows:-

S.No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6 th day of the following quarter in which the payment is received
2.	In any other case	5 th day of the following quarter in which the payment is received
3.	In the case payment is received in the quarter ending in March	31 st day of March

- (iii) Restrictions in rule 6(4B) omitted thereby allowing unlimited amount of permissible adjustment of excess service tax paid

Prior to amendment

Earlier the excess amount of service tax paid on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification was allowed subject to the following conditions:-

- The excess payment shall be utilized for the payment of service tax for the subsequent month liability subject to maximum of ₹ 2,00,000/- for a relevant month or quarter, as the case may be.
- The excess amount paid by a registered assessee, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.
- The adjustment shall be intimated to the jurisdictional superintendent of Central Excise within 15 days from such adjustment.

After the amendment

All the three aforesaid conditions [mentioned in point (a) to (c) above] have now been dispensed with. Consequently, sub-rule (4) now provides as under:-

The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

(iv) Changes in the composition rates

A. In case of insurer carrying on life insurance business [Sub-rule (7A)]

Where amount of the gross premium allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service:-

	Rate of service tax	
	Prior to amendment (Till 31.03.2012)	After amendment (With effect from 01.04.2012)
First	1.5% of the gross amount of premium charged	3% of the gross amount of premium charged
Subsequent year	1.5% of the gross amount of premium charged	1.5% of the gross amount of premium charged

B. In case of sale/purchase of foreign currency including money changing [Sub-rule (7B)]

S.No.	For an amount	Rate of service tax	
		Prior to amendment (Till 31.03.2012)	After amendment (With effect from 01.04.2012)
1.	Upto ₹ 100,000	0.1 % of the gross amount of currency exchanged or ₹ 25 whichever is higher	0.12 % of the gross amount of currency exchanged or ₹ 30 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 100 + 0.05 % of the gross amount of currency exchanged	₹ 120 + 0.06 % of the gross amount of currency exchanged
3.	Exceeding ₹ 10,00,000	₹ 550 + 0.01 % of the gross amount of currency exchanged	₹ 660 + 0.012 % of the gross amount of currency exchanged

		or ₹ 5,000 whichever is lower	or ₹ 6,000 whichever is lower
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C. In case of Distributor or Selling Agents of Lotteries [Sub-rule (7C)] :

Guaranteed lottery prize payout	Amount of service tax payable on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	
	Prior to amendment (Till 31.03.2012)	After amendment (With effect from 01.04.2012)
More than 80%	₹ 6000/-	₹ 7000/-
Less than 80%	₹ 9000/-	₹ 11000/-

II. AMENDMENTS IN THE POINT OF TAXATION RULES, 2011 [Notification No. 04/2011-ST dated 17.03.2012] effective from 01.04.2012

1. Date of payment [Rule 2A]

Rule 2A has been inserted to define the date of payment.

For the purposes of these rules, "date of payment" shall be:-

(a) date on which the payment is entered in the books of accounts

or

(b) date on which payment is credited to the bank account of the person liable to pay tax

whichever is earlier.

(A) Date of payment in case of change in effective rate of tax or a new levy between the above two dates

In case,

(i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account;

(ii) the bank account is credited after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and

(iii) the payment is made by way of an instrument which is credited to a bank account,

the date of payment shall be the date of credit in the bank account instead of the date of recording of payment in the books of accounts.

Analysis

Since rate of service tax has been changed from 10% to 12% with effect from 01.04.2012,

- (i) In case where service has been provided before 01.04.2012 and the cheque / demand draft etc. has been received upto March 31, 2012, applicable rate of service tax would be 10% provided cheque / demand draft is credited in the bank account by April 4, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 4, 2012] and consequently, new rate of 12% would be applicable.
- (ii) In case where date of issuance of invoice and receipt of payment by cheque / demand draft etc. is before 01.04.2012, applicable rate of service tax would be 10% provided cheque / demand draft etc. is credited in the bank account by April 4, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 4, 2012] and consequently, new rate of 12% would be applicable.
- (B) If any rule requires determination of the time or date of payment received: the expression "date of payment" shall be construed to mean such date on which the payment is received.

2. Amendments in rule 3 relating to determination of point of taxation

(a) Proviso to clause (a) amended

Prior to amendment

In case the invoice is not issued within 14 days of the completion of the provision of the service, the point of taxation shall be date of such completion.

After the amendment

In order to align the aforesaid proviso with increased time-limit for issuance of invoice from 14 days to 30 days (45 days in case of banks and financial institutions providing banking and other financial services) in rule 4A of the Service Tax Rules, 1994, proviso to clause (a) of rule 3 has been substituted with the following proviso:-

In case the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994 (30 or 45 days, as the case may be) of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) Proviso to clause (b) inserted

For the purposes of clauses (a) and (b), —

- (i) **Date of completion of provision of service in case of continuous supply of service:** In case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms

of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

- (ii) **Point of taxation in case where payment upto ₹ 1,000 received in excess of the invoiced amount**

Wherever the provider of taxable service receives a payment up to ₹ 1,000 in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined on the basis of invoice or completion of service, whichever is earlier, rather than payment.

Simultaneously, an amendment has also been made in the Service Tax Rules, 1994 which provides that service provider is not required to issue an invoice in the aforementioned case for such excess amount upto 1,000.

Purpose of the aforesaid provision:-

In this regard, DOF No. 334/1/2012-TRU dated 16.03.2012 clarifies as follows:-

As a measure of added facilitation, an option has been provided to determine the point of taxation in respect of small advances up to ₹ 1000, in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment. Such provision is expected to address the accounting problems faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers.

3. Rule 5 relating to payment of tax on new services substituted with the new rule

Rule 5 has been substituted with a new rule which provides as follows:-

Where a service is taxed for the first time, then,—

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within 14 days** of the date when the service is taxed for the first time.

****It is important to note that time-period available in case of new levy for the issuance of the invoice has still been restricted to 14 days as against normal time-period for issuance of invoice been extended to 30 days.**

4. Omission of rule 6 relating to determination of point of taxation in case of continuous supply of service

Since the essence of the rule applicable in case of continuous supply of service is the same as the main rule-rule 3, the separate rule for continuous supply of service has been omitted and merged with the main rule.

5. Rule 7 substituted with a new rule

Prior to amendment

Earlier, rule 7 provided that in the following cases, subject to specified conditions, date of receipt or payment of consideration would be the point of taxation:-

- (a) Person liable to pay service tax under reverse charge mechanism
- (b) *Services covered by rule 3(1) of the Export of Services Rules, 2005*
- (c) *Individuals or proprietary firms or partnership firms providing the eight specified services***

Further, in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be:-

- (a) the date of credit in the books of account of the person receiving the service

or

- (b) date of making the payment

whichever is earlier.

After the amendment

The special relaxation provided to category (b) has been shifted from the Point of Taxation Rules, 2011 to the Service Tax Rules, 1994.

Further, the benefit of payment of service tax on receipt basis earlier provided to eight specified services has also been withdrawn. However, in case of **individuals and partnership firms** whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, service tax on taxable services provided or to be provided by him up to a total of ₹ 50 lakh in the current financial year is payable on receipt basis (provided in Service Tax Rules, 1994).

This would help provide certainty in the application of rate of tax while retaining the benefit of payment of tax until payment is received.

New rule 7 reads as under:-

Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

However, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist:

Further, in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

****Note:** CBEC vide Circular No. 154/5/ 2012 – ST dated 28.03.2012 has clarified that, in respect of the specified eight services, for invoices issued on or before 31st March 2012, the point of taxation shall be the date of payment.

Further, Board has clarified vide Circular No. 158/9/2012 ST dated 08.05.2012 that the rate of service tax prevalent on the date when point of taxation occurs is the rate of service tax applicable on any taxable service. Therefore, in the abovementioned cases where the point of taxation is the date of payment, service tax should be charged @ 12% on these services, if the payment is received on or after 1st April, 2012 even though the invoices have been issued before 1st April, 2012.

It has also been clarified that the supplementary invoices may be issued to reflect the new rate of tax, if required to recover the differential amount and that CENVAT credit can be availed on such supplementary invoices and tax payment challans (in case of reverse charge).

6. Determination of point of taxation in other cases [Rule 8A inserted]

A residual rule-rule 8A has been inserted to determine the point of taxation by way of best judgment to handle situations where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine point of taxation. It provides as follows:-

Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

Definitions inserted / amended [Rule 2]

Following definitions have been inserted / amended:-

1. Definition of change in effective rate of tax inserted [Section 2(ba)]

“Change in effective rate of tax” shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder.

Earlier, this definition was provided as an explanation to rule 4 which has been omitted

now.

2. Definition of continuous supply of service amended [Section 2(c)]

Prior to amendment

Earlier, continuous supply of service means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months or any other notified service.

After the amendment

Amended definition reads as follows:-

Continuous supply of service means

(i) any service which is provided, or to be provided continuously *or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time,*

or

(ii) where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

Implication of the amendment

The definition of continuous supply of service has been amended to capture the concept in a more wholesome manner. Consequently, in case of continuous supply of services, the condition of making payment periodically or from time-to-time has been inserted. Moreover, the services provided on a recurrent basis shall also be considered as continuous supply of service.

7. Service to be treated as “completed” on completion of all the auxiliary activities enabling the service provider to issue the invoice

CBEC has clarified that the test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. The Service Tax Rules, 1994 require that invoice should be issued within a period of 30 days from the completion of the taxable service. The invoice needs to indicate *inter alia* the value of service so completed. Thus, it is important to identify the service so completed. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. However, it has been clarified that such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

The Board has elucidated that the above interpretation also applies to determination of the date of completion of provision of service in case of “continuous supply of service”.

[Circular No. 144/13/2011- ST dated 18.07.2011]

III. AMENDMENTS IN THE WORKS CONTRACT (COMPOSITION SCHEME FOR PAYMENT OF SERVICE TAX) RULES, 2007

Optional composition rate in case of works contract service increased to 4.8%
[Rule 3(1)]

Prior to amendment

Earlier, the person liable to pay service tax in relation to works contract service had the option to discharge his service tax liability on the works contract service by paying 4% of the gross amount charged instead of paying service tax the normal rate.

Amendment made by *Notification No. 10/2012-ST dated 17.03.2012*

With effect from 01.04.2012, the optional composition rate of service tax in case of works contract service has been raised from 4% to 4.8%.

Hence, optional composition rate for the period till 31.03.2012 is 4% and rate for the period commencing on or after 01.04.2012 is 4.8%.

IV. EXEMPTIONS / WITHDRAWAL OF EXEMPTIONS

1. Business Auxiliary Service provided to Stock-Brokers by Authorised Persons exempt from service tax

Business Auxiliary Services provided by Sub Brokers to Stock-Brokers in relation to sale or purchase of securities listed on a registered stock exchange are exempt from payment of service tax vide *Notification No. 31/2009 ST dated 01.09.2009*. Such exemption has now been extended to the authorized person also.

[Notification No. 44/2011 ST dated 09.09.2011]

2. Arbitration exempted from service tax

Taxable services provided to any business entity, by an arbitral tribunal, in respect of arbitration have been exempted from payment of service tax.

[Notification No. 45/2011 ST dated 12.09.2011]

3. Exemption/withdrawal of exemption from service tax on service provided in relation to 'transport of goods by rail'

The exemptions/withdrawal of exemptions with regard to service provided in relation to 'transport of goods by rail' can be summarized as follows:-

Notification No.	Amendment	Effect of amendment
07/2012-ST	Has amended Notification No.	Following services are subject to

dated 17.03.2012	7/2010 -ST dated 27.02.2010	service tax levy with effect from 1 st July, 2012:- (i) Transport of goods by Government railway. (ii) Transport of goods by rail otherwise than in containers.
08/2012-ST dated 17.03.2012	Has amended Notification No. 8/2010 -ST dated 27.02.2010	Exemption provided to transport of specified goods by rail is restored with effect from 1 st July, 2012.
09/2012-ST dated 17.03.2012	Has amended Notification No. 9/2010 -ST dated 27.02.2010	Abatement of 70% of the gross value of the freight charged on goods (other than exempted goods), in case of transportation of goods by rail, is effective from 1 st July, 2012.

4. **Simpler scheme for refund of service tax paid on specified services used for export of goods**

With effect from 03.01.2012, the old procedure for grant of refund prescribed vide *Notification 17/2009-ST dated 07.07.2009* has been dispensed with and a new scheme for refund of the service tax paid on the services received by an exporter and used for export of goods has been prescribed.

Under the latest simplified scheme, the exporters have been provided with an option to claim refund electronically through ICES scheme. Refund, however, continues to be restricted to specified 18 taxable services as before.

Manner of claiming refund

The exporters now have a choice to opt either of the following options:

- A. Electronic refund through ICES system, which is based on the notified 'schedule of rates' on the lines of duty drawback, or
- B. Refund on the basis of documents, by approaching the Central Excise/Service Tax formations.

A. Procedure for electronic refund through ICES system

(a) An exporter should

- (i) have a bank account and also a central excise registration or service tax code number** and the same should be registered with Customs ICES, and
- (ii) declare his option to avail service tax refund on the electronic shipping bill/bill

of export while presenting the same to the proper officer of Customs.

****Note:** If the exporter does not have Service tax code number referred to in clause (i) above, it should be obtained by filing a declaration in Form A-2 to the jurisdictional Assistant Commissioner / Deputy Commissioner of Central Excise.

- (b) Service tax paid on the specified services eligible as refund under this exemption shall be calculated electronically by the ICES system, by applying the rate specified in the schedule against the said goods, as a percentage of the FOB value.
- (c) Refund shall be deposited in the bank account of the exporter.
- (d) An exporter who has claimed the refund electronically cannot claim the refund again on the basis of documents.
- (e) Minimum service tax refund for an electronic shipping bill is ₹ 50.

B. Procedure for refund on the basis of documents

- (a) **Specified conditions to be fulfilled:** For claiming exemption, the exporter has to actually pay the service tax on the specified service used for export of goods and the exemption shall be subject to the certain specified conditions.
- (b) **No refund to service receiver:** In case the service tax has been paid on the specified service under reverse charge mechanism, service receiver will not be eligible to claim refund.
- (c) **Time-limit for filing the refund claim:** Time-limit for filing the refund claim shall be one year from the date of export of the said goods.

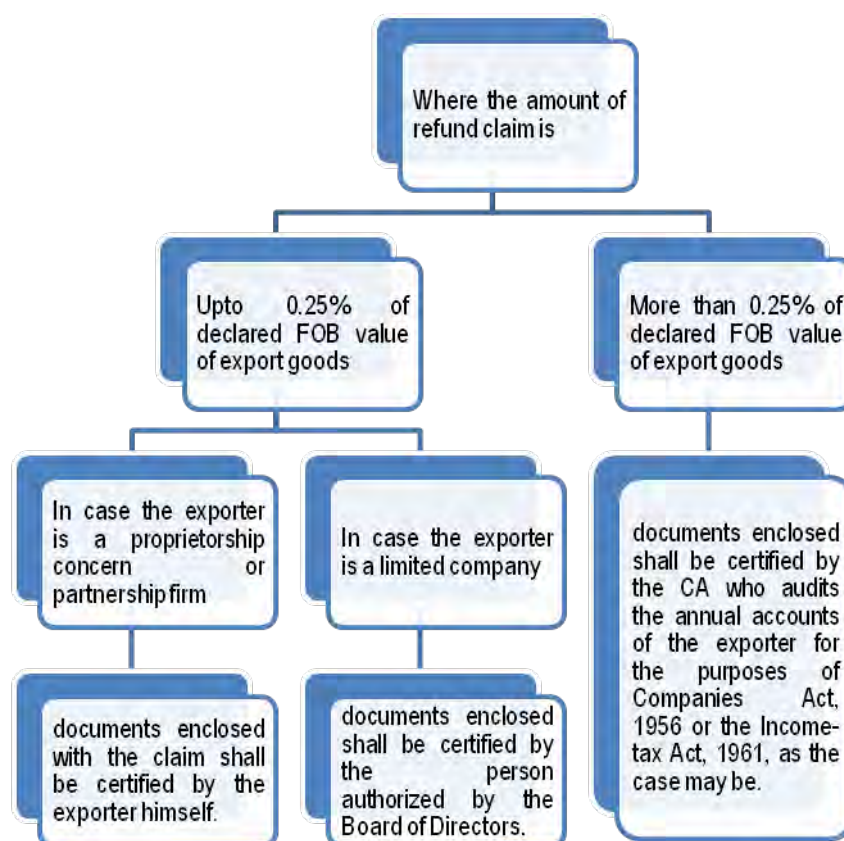
The date of export shall be the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962.

- (d) **Minimum amount of refund:** is ₹ 500.
- (e) **Realization of export proceeds:** Sale proceeds in respect of exported goods must be received by or on behalf of the exporter, in India, within the period allowed by the RBI, including any extension thereof.
- (f) **Documents to be submitted for refund claim**
 1. Exporter registered under Central Excise Act, 1944 shall file a refund application in Form A-1 to the jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise. Where the exporter is not so registered, he shall first file a declaration in Form A-2, seeking allotment of service tax code to the jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise and on obtaining the service tax code, file refund claim in Form A-1.

2. Relevant invoice/ bill/ challan/ any other document [including documents specified for each taxable service], in original, evidencing payment for the specified service used for export of the said goods and the service tax payable needs to be attached with the application.

- (g) Certification of the documents enclosed with the refund claim (mentioned in point 2.) above

The documents enclosed with the refund claim have to be certified in the following manner:-



- (h) Grant of refund

Assistant Commissioner/Deputy Commissioner of Central Excise, shall, after satisfying himself, shall grant the refund to the exporter.

- (i) No refund in case

Where any refund of service tax paid on specified service utilized for export of said goods has been allowed to an exporter but the sale proceeds in respect of said goods are not received by or on behalf of the exporter, in India, within the period

allowed by the Reserve Bank of India including any extension thereof, such refund shall be deemed never to have been allowed and recovered under the provisions of the said Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded.

Points to be noted:-

(a) No CENVAT credit on the specified services used for export

No CENVAT credit of service tax paid on the specified services used for export of the said goods can be taken under the CENVAT Credit Rules, 2004.

(b) No exemption to SEZ

The aforesaid exemption cannot be claimed by a Unit or Developer of a Special Economic Zone.

Specified services:-

1. Service provided to an exporter by an insurer, including a reinsurer carrying on general insurance business in relation to insurance of said goods
2. Service provided by a port or any person authorised by the port in respect of the export of said goods.
3. Service provided by a technical testing and analysis agency, in relation to technical testing and analysis of said goods.
4. Service provided by a technical inspection and certification agency in relation to inspection and certification of export goods.
5. Service provided by other port or any person authorised by that port in respect for export of said goods.
6. (i) Service provided for transport of said goods from the inland container depot to the port of export;
- (ii) Service provided to an exporter in relation to transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported.
7. (i) Service provided for transport of said goods from the inland container depot to the port of export, and
- (ii) services provided to an exporter in relation to transport of export goods directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported.
8. Specialized cleaning services namely disinfecting, exterminating, sterilizing or fumigating of containers used for export of said goods provided to an exporter.
9. Service provided for storage and warehousing of said goods.

10. Service provided by a courier agency to an exporter in relation to transportation of time sensitive documents, goods or articles relating to export, to a destination outside India.
11. Service provided by a custom house agent in relation to export goods exported by the exporter.
12. (i) Service provided in relation to collection of export bills;
(ii) Service provided in relation to export letters of credit such as advising commission, advising amendment, confirmation charges;
(iii) Service of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.
13. Service of purchase or sale of foreign currency including money changing provided to an exporter in relation to export goods.
14. Service of supply of tangible goods for use, without transferring right of possession and effective control of tangible goods, provided to an exporter in relation to goods exported by the exporter.
15. Service provided by a clearing and forwarding agent in relation to export goods exported by the exporter.
16. Payment of service tax paid on services commonly known as terminal handling charges in relation to export goods exported by the exporter.
17. Service provided for transport of export goods through national waterway, inland water and coastal shipping.
18. Service provided by airports authority or any other person in any airport in respect of the export of said goods.

[Notification No. 52/2011 dated 30.12.2011]

5. First clearances up to ₹ 10 lakh, for the purposes of small service providers' exemption, to be in terms of invoices and not mere payments received

With effect from 01.04.2012, *Notification No. 6/2005 dated 01.03.2005* granting exemption to small service providers has been amended recognizing that the first clearances up to ₹ 10 lakh will be in terms of invoices and not mere payments received. This amendment has been carried out to align the said exemption with the Point of Taxation Rules, 2011.

Prior to amendment	After the amendment
"aggregate value not exceeding Rs. 10,00,000" means the sum total of first consecutive payments received	"aggregate value not exceeding Rs. 10,00,000" means the sum total of value of taxable services charged in the first consecutive invoices issued or required to be issued, as

during a financial year towards the gross amount, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to ₹ 10 lakh but does not include payments received towards such gross amount which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification.	the case may be, during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification.
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[Notification No. 05/2012-ST dated 17.03.2012]

V. CLARIFICATIONS

1. Service tax is not chargeable on delayed payment charges collected by Stock Brokers

CBEC has clarified that service tax would not be payable on the additional amount that is collected towards the delay in making payment to the stock brokers by their customers (delayed payment charges) in respect of Stock Broker's services.

The Board has referred to two of its earlier circulars on the issue. The circulars are:

- (i) *Circular No. 96/7/2007 - ST dated 23.08.2007* which clarifies that an amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and therefore, does not form a part of the value of taxable service.
- (ii) *Circular No. 121/02/2010 - ST dated 26.4.2010* which clarifies that detention charges in respect of detained containers are not in respect of service provided on behalf of client (under BAS) nor is it on account of infrastructure support services (under BSS). Such charges can at best be called as 'penal rent' for retaining the containers beyond the predetermined period. Therefore, the amount collected as 'detention charges' is not chargeable to service tax.

Applying the same analogy, CBEC has clarified that delayed payment charges received by the stock brokers are also therefore, not includible in taxable value as the same are not the charges for providing taxable services. Such charges are on account of delay in making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time.

It may be noted that the Board has stated that this principle will also apply to other service providers.

However, section 67 of the Finance Act 1994 provides that service tax is chargeable on taxable value which shall be the 'gross amount charged' by the service provider.

Therefore, if in the account statement / invoice / bill etc issued by the service provider, only the gross amount is shown without indicating the delayed payment charges separately, the service tax would be payable on the entire amount. Delayed payment charges would not be includible in 'gross value charged' only if these charges are shown separately in the account statement/invoice/bill etc.

[CBEC Letter No. F.No.137/25/2011-ST dated 03.08.2011]

2. Clarification on levy of service tax on distributors/sub-distributors of films & exhibitors of movie

Earlier, *Circular No. 109/03/2009 dated 23.02.2009* clarified that screening of movie is not taxable except in a case where the distributor leases out the hall for screening of the movie,

- (i) the theater owner gets a fixed rent from the distributor.
- (ii) the profit or loss from exhibiting the film is borne by the distributor.

In such a case, the theatre owner provides the taxable service of 'renting of immovable property' for furtherance of business or commerce and is accordingly liable to pay service tax on the rent received from the distributor.

However, in view of the introduction of "services related to copyrights on cinematographic film and sound recording" and enhancement of the scope of "business support services" by substitution of words 'operational assistance for marketing' with the words 'operational or administrative assistance', the Department has revisited its stand taken in the said circular.

The arrangements entered into by the distributor/sub-distributor/area distributor etc and the exhibitor/ theatre owner etc in exhibiting the film produced by the producer, the original copyright holder, the arrangements and their respective service tax classification is tabulated as under:

In case where	Type of arrangement	Service tax implication
Distributor/sub-distributor /area distributor enters into an arrangement with the exhibitor or theatre owner with no profit/revenue sharing agreement	Movie being exhibited by theatre owner or exhibitor on his account – i.e. the copyrights are temporarily transferred	Service tax is leviable under copyright service on the service to be provided by distributor or sub-distributor or area distributor or producer etc, as the case may be.
	Movie being exhibited on behalf of distributor or sub-distributor or area distributor or producer etc – i.e. no	Depending upon the arrangement whether the theatre owner has merely let out its premises to the

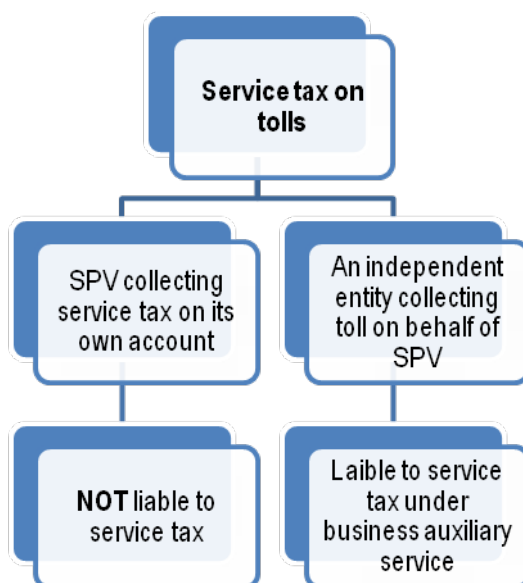
	copyrights are temporarily transferred	distributor or is also involved in giving support services for the business of the distributor, there can be a case of levability of service tax on the remuneration retained by such theatre owner under renting of immovable property service/business support service, to be provided by theatre owner or exhibitor
Distributor/sub-distributor /area distributor enters into an arrangement with the exhibitor or theatre owner with the understanding to share revenue/profits	Arrangement is on principal-to-principal basis	The character of a "person" is not acquired in the business transaction and the tax is leviable on either of the constituent members based on the nature of the transaction and as per rules of classification of service as embodied under section 65A of the Finance Act, 1994.
	Arrangement is NOT on principal-to-principal basis	A new entity emerges, distinct from its constituents. As the new entity acquires the character of a "person", the transactions between it and the other independent entities namely the distributor / sub-distributor / area distributor and the exhibitor etc will be a taxable service under applicable service head.

[Circular No. 148/17/2011-ST dated 13.12.2011]

3. Service tax not leviable on toll in the nature of 'user charge' or 'access fee' paid by roads users

Issue: Whether the toll fee paid by users, for using the roads, is liable to service tax?

Clarification: Toll is a fee paid by the users of roads, including those roads constructed by a Special Purpose Vehicle (SPV) created under an agreement between National Highway Authority of India (NHAI)/State Authority and the concessionaire (Public Private Partnership Model / Build-Own/Operate-Transfer arrangement). 'Tolls' is a matter enumerated (serial number 59) in List-II (State List), in the Seventh Schedule of the Constitution of India and the same is not covered by any of the taxable services at present.



(a) **SPV collecting service tax on its own account not liable to service tax**

Under PPP model, SPV collects toll on its own account and not on behalf of the person who has made the land available for construction of the road. Similarly, an SPV formed as a result of agreement between NHAI/State Authority and the concessionaire under the BOT arrangement, cannot be considered as an agent of the NHAI. Hence, renting, leasing or licensing of vacant land by the NHAI or State Authority to an SPV for construction of road and such construction, do not attract service tax.

(b) **An independent entity collecting toll on behalf of SPV liable under “business auxiliary services”**

SPV engages an independent entity to collect toll from users on its behalf and a part of toll collection is retained by that independent entity as commission or is compensated in any other manner, service tax liability arises on such commission or charges, under the Business Auxiliary Service [section 65(105)(zzb) read with section 65(19) of the Finance Act, 1994]

Key to important terms used**1. BOT (Build-Operate-Transfer arrangement)**

A company builds a facility, an infrastructure project, gets to operate it for a while and is paid for that, and finally transfers it back to the public sector at the end of sometime.

2. BOOT (Build-Own-Operate-Transfer arrangement)

A private project company builds a project, operates it for some period of time (like 20 or 25 years) during which they collect revenues, and then transfers it to the host government or its agency.

3. BOO (Build-Own-Operate arrangement)

The contractor constructs and operates a facility without transferring ownership to the public sector. Legal title to the facility remains in the private sector, and there is no obligation for the public sector to purchase the facility or take title.

4. Public–Private Partnership (PPP)

Public–private partnership (PPP) describes a government service or private business venture which is funded and operated through a partnership of Government and one or more private sector companies.

5. Special purpose vehicle (SPV)

A special purpose vehicle (SPV) is a company that is created solely for a particular financial transaction or series of transactions.

[Circular No. 152/3 /2012-ST dated 22.02.2012]

4. CBEC prescribes the documents to be submitted along with the application of service tax registration

The following documents have been prescribed by the CBEC to be submitted along with the application for registration under service tax:

- (a) Copy of Permanent Account Number (PAN)
- (b) Proof of Residence
- (c) Constitution of the Applicant
- (d) Power of Attorney in respect of authorized person (s).

The above documents must be submitted within a period of 15 days from the date of filing of the application, otherwise the application may be rejected. The time limit of seven days within which the registration is to be granted by the Superintendent of Central Excise/Service Tax would be reckoned from the date the application for registration is complete in all respects.

[Order no. 2/2011 - ST dated 13.12.2011 - F.No. 137/120/2011 - ST]

5. **Services provided by the Agricultural Produce Marketing Committee (APMC) /Board**

The CBEC has issued the following clarification as to whether the services provided by the Agricultural Produce Marketing Committee (APMC) /Board are liable to service tax.

Leviability under business support services

It has been clarified by the Board that under business support services, tax is to be levied on the outsourced services as illustrated in the definition of support services of business/commerce. In the light of the above instruction, the service provided by APMC out of the market fee is not in the nature of 'outsourced service'. It is not possible to hold that the licensees have outsourced the development and maintenance of agricultural market to the APMC, which could have been otherwise undertaken by them, solely in their business interest. Development and maintenance of agricultural market infrastructure undertaken by APMC in accordance with the statute, is for the benefit of all users, rather than an activity solely in the interest of licensees. Hence, APMC cannot be said to be rendering 'business support service' to the licensees. 'Market fee' is not in the nature of consideration for such business support service.

Leviability under business auxiliary services

As statutory bodies, APMCs provide basic facilities in the market area out of the 'market fee' collected from the licensees, mainly to facilitate the farmers, purchasers and others. APMCs provide a host of services to the licensees in relation to the procurement of agricultural produce, which are 'inputs' in terms of the definition given in section 65(19) of the Finance Act, 1994 itself. To that extent the meaning of 'input' is much wider in scope than the meaning assigned in rule 2(k) of Cenvat Credit Rules, 2004. Therefore, it is clarified that the services provided by the APMC are classifiable as business auxiliary services and hence covered by the exemption under Notification 14/2004-ST.

It may be noted that any other service provided by the APMCs for a separate charge (other than 'market fee') to either the licensees or farmers or any other person, e.g. renting of shops in the market area, etc. would be liable to tax under the respective taxable heads.

Agricultural Produce Marketing Committee

APMCs are statutory bodies created with a view to regulate agricultural produce markets. APMCs charge market fee for issuing licenses to whole sale trader-cum-commission agent, wholesale traders, commission agent, mill / factory / cold storage owners or any other buyers of agricultural produce, for an agricultural year. The amount so collected by the APMC, from the licensees, is used for providing among other things facilities like roads, drinking water, weighing machines, storage places, street lights, etc. in the market area. These services are not provided on one-to-one basis i.e. in consideration or as an obligation to the persons who have tendered the license fee.

Some of these services may be capable of being used more conspicuously by the licensees but they do not form part of any contractual obligation to any of the licensees.

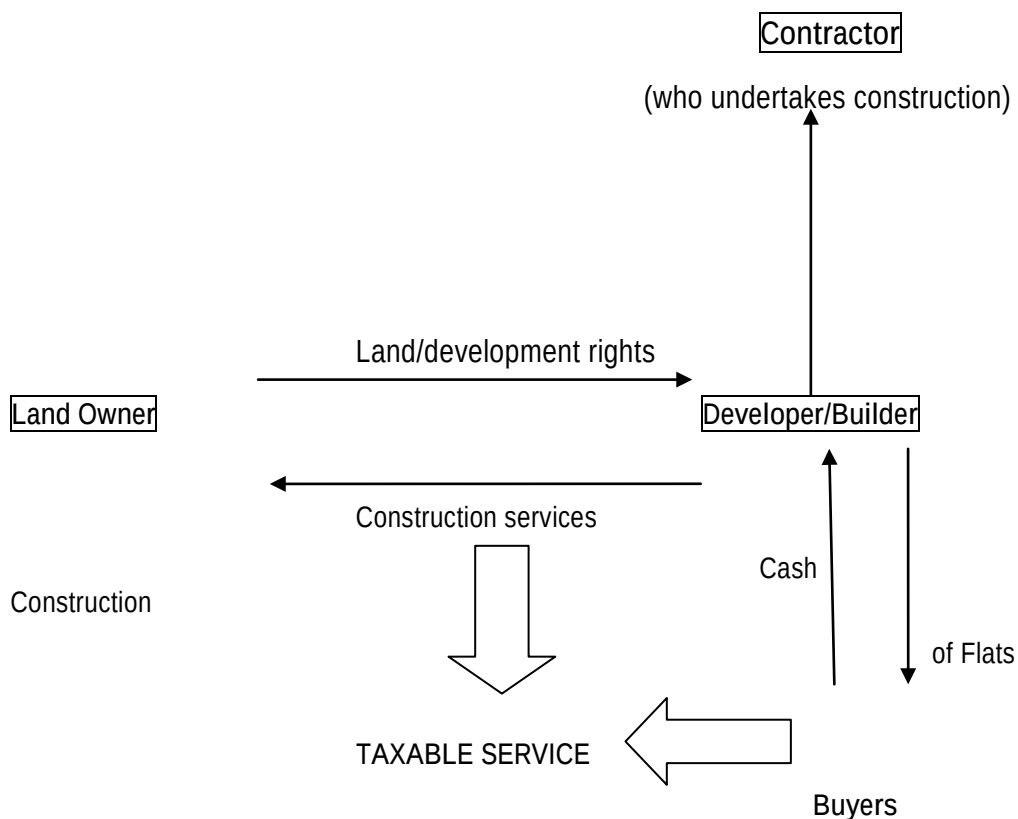
[Circular No. 157/8 /2012-ST dated 27.04.2012]

6. Clarification regarding the service tax on construction services under various business models

(a) TRIPARTITE BUSINESS MODEL

Parties in the model: (i) landowner; (ii) builder or developer; and (iii) contractor who undertakes construction).

Issue: Whether service tax is liable to be paid on flats/houses agreed to be given by builder/developer to the land owner towards the land /development rights and to other buyers?



Clarification:

- I. **Taxability:** Construction service provided by the builder/developer is taxable in case any part of the payment/development rights of the land was received by the builder/

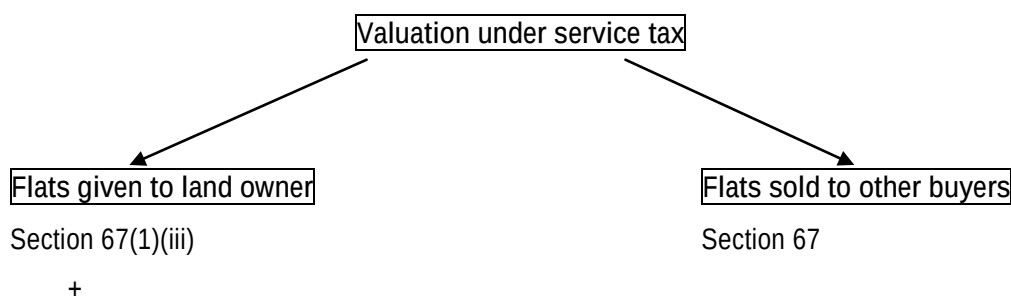
developer before the issuance of completion certificate and the service tax would be required to be paid by builder/developers even for the flats given to the land owner.

II. Valuation:

- (i) **Flats given to the land owner:** Value is determinable in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006, as the consideration for these flats i.e., value of land / development rights in the land may not be ascertainable ordinarily. Accordingly, the value of these flats would be equal to the value of similar flats (as are sold nearer to the date on which land is being made available for construction) charged by the builder/developer from other buyers.

Liability to pay service tax arises at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (eg. allotment letter).

- (ii) **Flat sold to other buyers:** Value shall be determined in terms of section 67 of the Finance Act, 1994.



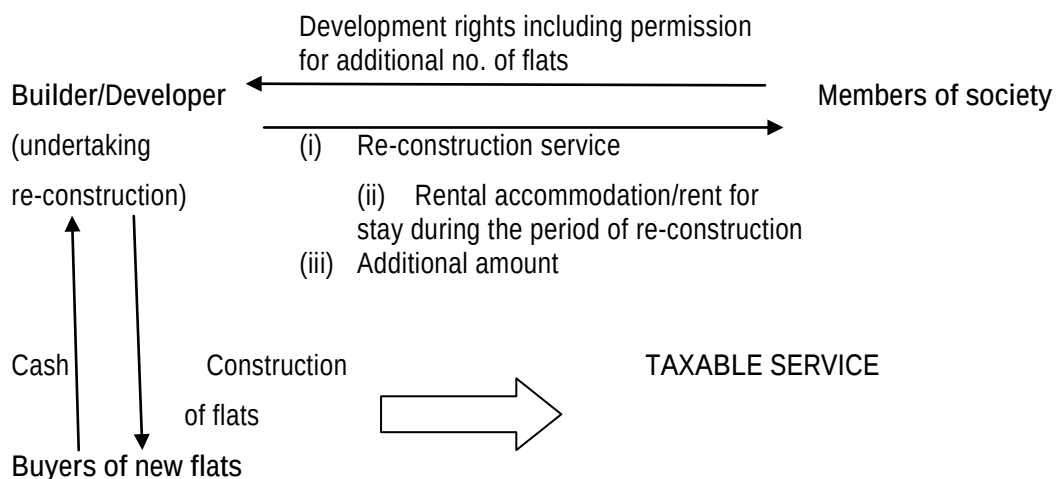
Rule 3(a) of the Valuation Rules

(b) RE-DEVELOPMENT INCLUDING SLUM REHABILITATION PROJECTS

Generally in this model, land is owned by a society, comprising members of the society with each member entitled to his share by way of an apartment. When it becomes necessary after the lapse of a certain period, society/its flat owners may engage a builder/developer for undertaking re-construction.

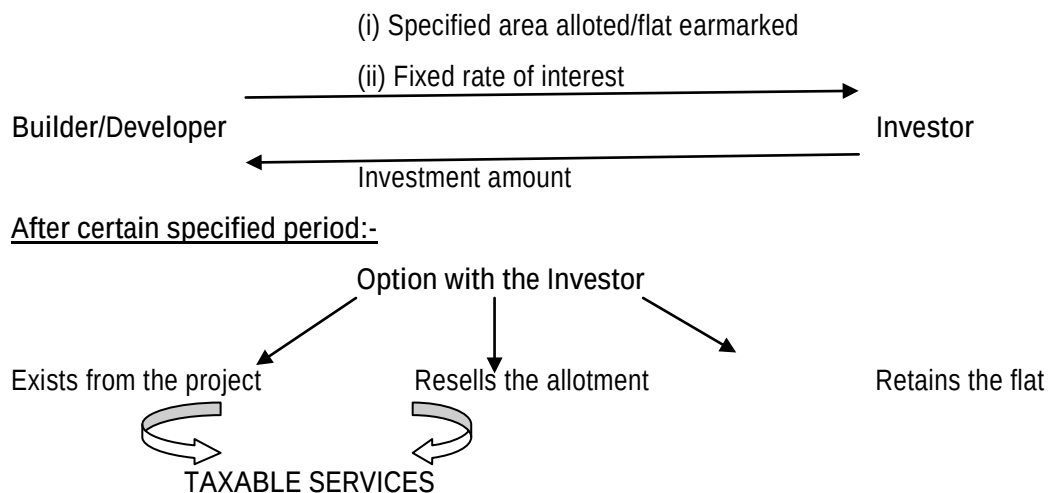
Society /individual flat owners give 'No Objection Certificate' (NOC) or permission to the builder/developer, for re-construction. The builder/developer makes new flats with same or different carpet area for original owners of flats and additionally may also be involved in one or more of the following:

- (i) construct some additional flats for sale to others;
- (ii) arrange for rental accommodation or rent payments for society members/original owners for stay during the period of re-construction;
- (iii) pay an additional amount to the original owners of flats in the society.



- I. **Taxability:** Construction service provided by the builder/developer to the buyers of new flats of service receivers is taxable in case any payment is made to the builder/developer before the issuance of completion certificate.
- II. **Valuation:** Value shall be determined in terms of section 67(1)(i) of the Finance Act, 1994.

(c) INVESTMENT MODEL



In this model, before the commencement of the project, the same is on offer to investors. Either a specified area of construction is earmarked or a flat of a specified area is allotted to the investors and as it happens in some places, additionally the investor may also be promised a fixed rate of interest. After a certain specified period, an investor has the

option either to exit from the project on receipt of the amount invested alongwith interest or he can re-sell the said allotment to another buyer or retain the flat for his own use.

Taxability: Investment amount shall be treated as consideration paid in advance for the construction service to be provided by the builder/developer to the investor and the said amount would be subject to service tax. If the investor decides to exit from the project at a later date, either before or after the issuance of completion certificate, the builder/developer would be entitled to take credit under rule 6(3) of the Service Tax Rules, 1994 (to the extent he has refunded the original amount). If the builder/developer resells the flat before the issuance of completion certificate, again tax liability would arise.

(d) CONVERSION MODEL

Conversion of any hitherto untaxed construction /complex or part thereof into a building or civil structure to be used for commerce or industry, after lapse of a period of time would be liable to service tax only if such conversion falls within the meaning of commercial or industrial construction service.

(e) NON REQUIREMENT OF COMPLETION CERTIFICATE/WHERE COMPLETION CERTIFICATE IS WAIVED/NOT PRESCRIBED

In certain States, completion certificates have been waived or are considered as not required for certain specified types of buildings. In such cases, the equivalent of completion certificate by whatever name called should be used as the dividing line between service and sale.

(f) BUILD- OPERATE - TRANSFER (BOT) PROJECTS

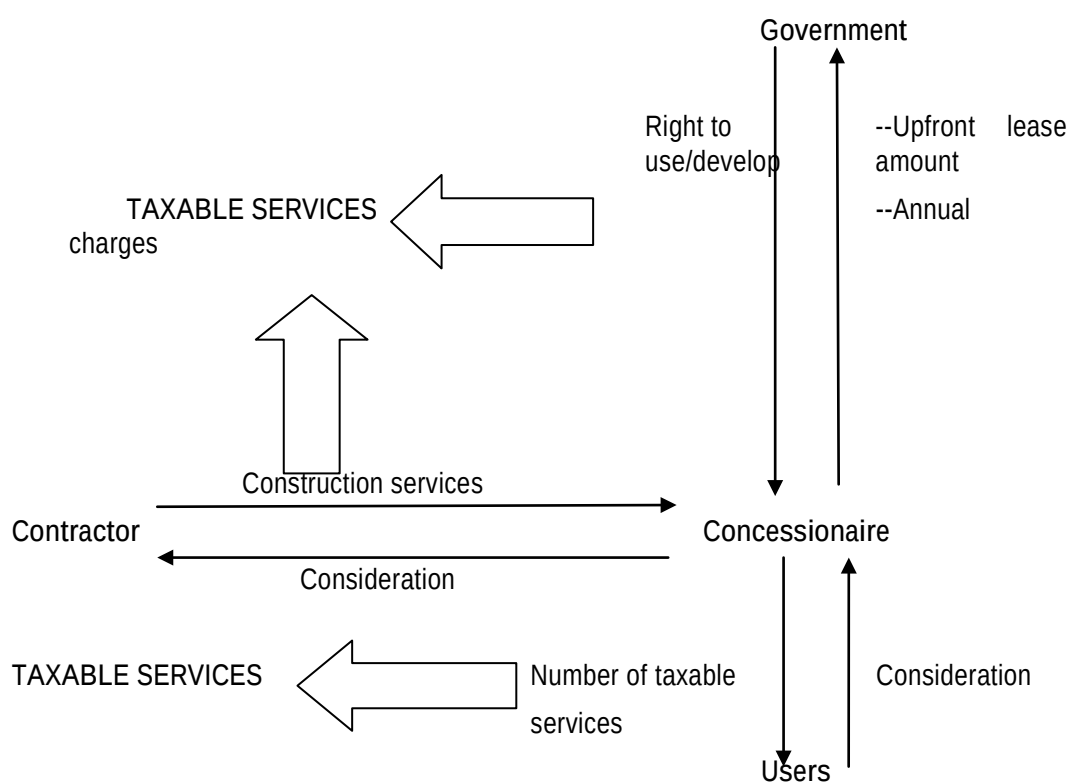
Generally under BOT model, transactions involving taxable service take place usually at three different levels: Firstly, between Government or its agency and the concessionaire; secondly, between concessionaire and the contractor and thirdly, between concessionaire and users, all in terms of specific agreements.

First level: Government or its agency transfers the right to use and/or develop the land, to the concessionaire, for a specific period, for construction of a building for furtherance of business or commerce (partly or wholly). Consideration for this taxable service may be in the nature of upfront lease amount or annual charges paid by the concessionaire to the Government or its agency. Here the Government or its agency is providing 'renting of immovable property service' (renting of vacant land to be used for furtherance of business or commerce).

In this model, though the concessionaire is undertaking construction of a building to be used wholly or partly for furtherance of business or commerce, on the land provided by the government or its agency for temporary use, he will not be treated as a service provider since such construction has been undertaken by him on his own account and he remains the owner of the building during the concession period.

Second level: Where the concessionaire engages a contractor for undertaking construction of a building on the land, service tax is payable on the construction service provided by the contractor to the concessionaire.

Third level: Concessionaire enters into agreement with several users for commercially exploiting the building developed/constructed by him, during the lease period. At this level, concessionaire is the service provider and user of the building is the service receiver. The concessionaire may provide to the users, taxable services such as 'renting of immovable property service', 'business support service', 'management, maintenance or repair service', 'sale of space for advertisement', etc. Service tax is leviable on the taxable services provided by the concessionaire to the users.



(g) JOINT DEVELOPMENT AGREEMENT MODEL

Under this model, land owner and builder/developer join hands and may either create a new entity or otherwise operate as an unincorporated association, on partnership /joint / collaboration basis, with mutuality of interest and to share common risk/profit together. The new entity undertakes construction on behalf of landowner and builder/developer.

[Circular No. 151 /2 /2012-ST dated 10.02.2012]

C. CUSTOMS

1. E-payment of customs duty made mandatory for importers paying duty of Rs 1 lakh or more

In order to reduce the transaction cost of the importers and expedite the time taken for customs clearance, the CBEC has made e-payment of duty mandatory for the importers paying an amount of ₹ 1,00,000 or more per transaction. *The date from which the E-payment will be made mandatory will be notified separately.* In 2007, e-payment facility was introduced on a voluntary basis.

Further, the Board has clarified that Accredited Importers under the Customs Accredited Client Programme will have to duty through E- payment mode only irrespective of the amount of duty to be paid.

Any importer wanting to make use of the e-payment facility first needs to have an Internet account with a designated bank. The Board has set up a dedicated payment gateway called, 'ICEGATE'.

If the importer is registered on this Web site, it can easily use the e-payment facility with the current log-in facility. Those that are un-registered can also use the Web site as an 'unregistered user'.

The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

[Circular No. 33/2011 Cus. dated 29.07.2011]

2. Time Period for claiming drawback on Goods exported other than by post prescribed under Drawback Rules aligned with the period prescribed under section 75A

Section 75A of the Customs Act, 1962 provides for payment of interest if the drawback is not paid to the claimant within one month from the date of filing a claim for drawback at the rate prescribed from the date of expiry of one month till the date of payment of such drawback. This period of 'one month' was amended w.e.f 14.05.2003 from 'two months' prior to 14.05.2003.

However, corresponding amendment was not made in rule 13(4) of the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995, which provides for manner and time limit for claiming drawback. The rule continued to mention that 'two months' period prescribed under section 75A shall exclude the time taken in testing of the export goods subject to maximum of one month. CBEC has therefore, now amended this period under Rule 13(4) from 'two months' to 'one month' to bring it in line with time limit prescribed under section 75A.

[Notification No. 69 /2011- Cus (NT) dated 22.09.2011]

3. Section 28 of Customs Act amended retrospectively to validate Show Cause Notices

The Supreme Court in the case of CCus. v. Sayed Ali 2011 (265) ELT 17 has held that Collector of Customs (Preventive) is not 'proper officer' and hence not competent to issue Show Cause Notice. The Apex Court held that only the customs officer assigned with specific functions of assessment and re-assessment in jurisdictional area where goods are imported are competent to issue show cause notice under Section 28 of Customs Act, 1962 as 'proper officer'. The Court further ruled that Notifications appointing Collector of Customs (Preventive) to be Collector of Customs for Bombay, Thane and Kolaba Districts do not ipso facto confer jurisdiction on him to exercise power entrusted to 'proper officers' under Section 28. The Court explained that the governing test to determine whether an 'officer of customs' is 'proper officer' is the specific entrustment of function by either CBEC or Commissioner of Customs under section 2(34) of Customs Act, 1962.

Pursuant to the above judgement, an *Instruction F.No.437/143/2009- Cus. IV(pt) dated 15.04.2011* was issued by the Board directing the field formations to examine pending Show Cause Notices and wherever these are not hit by time limitation to get these issued afresh by the jurisdictional Commissionerates. Further, as a prospective remedial measure, the officers of Directorate General of Revenue Intelligence (DRI), Commissionerates of Customs (Preventive), Directorate General of Central Excise Intelligence (DGCEI) and Central Excise Commissionerates were assigned the functions of the 'proper officer' for the purposes of Sections 17 and 28 of the Customs Act by the Board vide *Notification No.44/2011-Customs (N.T.), dated 06.07.2011*.

With a view to validate the Show Cause Notices issued prior to 06.07.2011, the Board had proposed to retrospectively amend section 28 of the Act by the Customs (Amendment and Validation) Bill, 2011. The President has given assent to the said Bill and the amendment to Section 28 has come into force w.e.f. 16.09.2011. The said Act amends Section 28 of the Customs Act, 1962 by inserting clause (11), which reads as follows:

"(11) Notwithstanding anything to the contrary contained in any judgement, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the sixth day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section."

Accordingly, as per the amended Section 28 of the Customs Act, 1962 Show Cause Notices issued prior to 06.07.2011 by officers of Customs, which would include officers of Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence and similarly placed officers

stand validated since these officers are retrospectively recognized as 'proper officers' for the purpose of Sections 17 and 28 of the said Act.

The Board has therefore, withdrawn *Instruction F.No.437/143/2009-Cus. IV (pt) dated 15.04.2011* as the matter pertaining to validity of Show Cause Notice has now been settled in terms of *Notification No.44/2011-Customs (N.T.) dated 06.07.2011* and amended Section 28 of the Customs Act, 1962.

It may be noted that though in terms of Notification No.44/2011-Customs (N.T.) dated 06.07.2011 the officers of DRI and DGCEI are 'proper officers' for the purposes of Section 28, the Board has directed that these officers shall not exercise authority in terms of clause (8) of Section 28 of the said Act. In other words, there would be no change in the present practice and officers of DRI and DGCEI shall NOT adjudicate the Show Cause Notices issued under Section 28 of the Act.

[Circular No. 44/2011 Cus dated 23.09.2011]

4. Advance Ruling facility available to resident public limited companies

By virtue of *Notification No. 67/2011 dated 22.09.2011*, the Resident Public Limited Companies have been brought under the ambit of Section 28E of Customs Act. Such companies can now avail the facility of advance ruling on the issues like classification, applicability of any exemption notification, principles of valuation, applicability of notifications issued in respect of duties under the Customs Act, 1962, Customs Tariff Act, 1975, and any duty chargeable under any other law for the time being in force in the same manner as duty of Customs under the Customs Act, 1962 etc.

Public limited company shall have the same meaning as is assigned to a "public company" in clause (iv) of sub-section (1) of section 3 of the Companies Act, 1956 and shall include a private company that becomes a public company by virtue of section 43A of the said Act. A 'resident' shall have the same meaning as is assigned to it in clause (42) of section 2 of the Income tax Act, 1961 in so far as it applies to a company. The facility provides an option to wholly Indian-owned companies to seek binding rulings so as to avoid risk litigation at a later stage.

Hitherto, the advance ruling facility was restricted to any person who is a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident, any person who is a resident setting up a joint venture in India in collaboration with a non-resident, a wholly-owned subsidiary Indian company of which the holding company is a foreign company, a joint venture in India or a resident who proposes to import any goods under specified preferential or free trade agreements. In 2009, public sector companies were also allowed to seek advance ruling and now the facility has been extended to resident public limited companies.

[Notification No.67/2011 Cus. (NT) dated 22.09.2011]

5. Limits for duty free baggage for tourists revised

Rule 7 of Baggage Rules, 1998 contains the provisions for clearance of free of duty articles by tourist in his bonafide baggage. The limit of baggage allowed is contained in Appendix E of the Rules. The Appendix E has been revised as under:

(1)	(2)
(a) Tourists of Indian origin coming to India other than tourists of Indian origin coming by land routes as specified in Annexure IV;	(i) used personal effects and travel souvenirs, if - (a) these goods are for personal use of the tourist, and (b) these goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination. (ii) articles as allowed to be cleared under rule 3 or rule 4.
(b) Tourists of foreign origin, other than those of Pakistani origin coming from Pakistan, coming to India by air.	(i) used personal effects (ii) articles other than those mentioned in Annexure I up to a value of ₹ 8000 for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger.
(c) Tourists – (i) of Pakistani origin coming from Pakistan other than by land routes; (ii) of Pakistani origin or foreign tourists coming by land routes as specified in Annexure IV; (iii) of Indian origin coming by land routes as specified in Annexure IV.	(i) used personal effects (ii) articles other than those mentioned in Annexure I up to a value of ₹ 6000 for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger.

[Notification No. 77/2011 Cus. (NT) dated 14.11.2011]

6. Request for provisional assessment of duty can now be made even by an importer/exporter

Central Board of Excise and Customs has issued new Customs (Provisional Duty Assessment) Regulations, 2011. The new regulations provide that duty can be provisionally assessed by the proper officer if an importer/exporter is unable to make self-assessment under section 17(1) of the Customs Act, 1962 or if the proper officer is not able to verify the self-assessment or make re-assessment of the duty on the imported/export goods.

The importer/exporter will have to execute a bond of an amount equal to the difference between the duty that may be finally assessed or re-assessed and the provisional duty and deposit twenty per cent of the provisional duty with the proper officer. The proper officer may require the bond to be executed along with such surety or security, or both. Any contravention to these regulations would attract penalty which may extend to Rs.50,000.

[Notification No. 81/2011 Cus (NT) dated 25.11.2011]

7. Revised allowances for passengers other than tourists

The basic allowance to passengers other than tourists consists of

- (a) Used personal effects, excluding jewellery required for satisfying daily necessities of life.
- (b) Other articles which are carried on the person or in his accompanying baggage.

There is no value limit for used personal daily necessities of life.

However there is a value limit in respect of other articles of baggage (apart from the goods mentioned in Annexure-1) as categorized according to age of the passenger, country from which they returning and the number of days of stay abroad. Some of these allowances have been revised as under:-

Country coming from	Age of the Passenger	Duration of Stay	Pre-revised Value Limit	Revised Value Limit
Countries other than Nepal, Bhutan, Myanmar or China	10 Yrs. or more	More than 3 days	₹ 25,000/-	₹ 35,000/-
		3 days or less	₹ 12,000/-	₹ 15,000/-
	Upto 10 yrs	More than 3 days	₹ 6,000/-	₹ 15,000/-

[Notification No.21/2012-Cus (N.T.) dated 17.03.2012 and 37/2012-Cus (N.T.) dated 23.04.2012]

8. EC and SHEC exempted on CVD

Central Government has exempted education cess and secondary and higher education cess leviable under sub-section (1) of section 3 of the Customs tariff Act, 1975.

[Notification No.13/14-Cus both dated 17.03.2012]

PART – II : QUESTIONS AND ANSWERS**QUESTIONS****Manufacture**

1. Kaavya was the manufacturer of the white cement. He repaired his worn out machineries/parts of the cement manufacturing plant at its workshop such as damaged roller, shafts and coupling with the help of welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams, etc. In this process of repair, M.S. scrap and Iron scrap were generated. Kaavya cleared this metal scrap and waste without paying any excise duty. The Department issued a show cause notice demanding duty on the said waste contending that the process of generation of scrap and waste amounted to the manufacture in terms of section 2(f) of the Central Excise Act.

Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.

Settlement Commission

2. M/S Jagannath got its unit Jagannath Internationals Limited (JIL) registered after few days of the search conducted in its unit. Thereafter, it filed consolidated return with the Department for the period prior to search. After that, it filed a settlement application in respect of the proceedings issued by the Commissioner. The Settlement Commission opined that the units were registered only after the search was conducted and prior to that there was no registration and no returns as mandated by clause (a) of first proviso to section 32E(1) of the Central Excise Act, 1944 were filed. Consequently, the Commission rejected the settlement application on the ground that the application did not conform to the parameters as stipulated under section 32E(1) of the Act.

Explain, with the help of a decided case law, whether the rejection order passed by Settlement Commission is valid in law?

Refund under Central Excise Law

3. Examine, with the help of a decided case law, whether for the purpose of computing interest on delayed refunds under section 11BB of the Central Excise Act, 1944, the period commences with the date of receipt of application for refund or date on which the order of refund is made?

Central Excise Rules, 2002

4. Examine the validity of the following statements, with reference to the Central Excise Rules, 2002:-
- The procedures prescribed for export under claim for rebate and export without payment of duty under bond does not apply to Nepal .
 - In respect of goods received at concessional rate of duty, return is required to be filed on a monthly basis.

Warehousing

5. Mr. Subodh Mishra, manufactures electronic items for selling them within India as well as exports to Germany. He has stored his goods in the warehouse for the purpose of export. However, on account of certain unforeseen circumstances, goods cannot be exported to Germany. Now, he wishes to divert the goods kept in the warehouse for the purpose of export for home consumption. Explain briefly the procedure under Central Excise Act, 1944 to be adopted by Mr. Subodh Mishra for diverting the said goods kept in the warehouse for the purpose of export to Germany for home consumption.

CENVAT Credit Rules, 2004

6. Examine the validity of the following statements, with reference to the CENVAT Credit Rules, 2004:-
- If the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to the duty leviable on transaction value.
 - Rule 4 of CENVAT Credit Rules, 2004 allows credit of inputs without bringing them into the premises of output service provider subject to due documentation regarding their delivery and location.

Duty Liability of SSI unit

7. Arigo Ltd. is a small scale industrial unit which is producing 'Fast', a tonic for growing children. Under the Annual Report for the year 2011-12, the SSI unit shows gross sales turnover* of ₹ 1,95,10,000, inclusive of excise duty and VAT. The product 'Fast' attracts excise duty @ 12% and VAT @ 1%. Calculate the duty liability under *Notification No. 8/2003 dated 01.03.2003*.

* Gross Sales Turnover of ₹ 1,95,10,000 is eligible for exemption under *Notification No. 8/2003*. Further, for the year 2010-11, the taxable clearances of SSI unit was ₹ 1,60,00,000.

Valuation of excisable goods

8. ABC Limited is engaged in the manufacture of Product 'X' for the purpose of captive consumption Determine the assessable value of Product 'X':-

Direct Wages & Salaries

19,500

Consumable stores and repairs	5,700
Research and Development Costs	3,800
Direct Material (including excise duty of ₹1800)	35,000
Administrative overheads (relating to production activities)	5,300
Selling and Distribution Costs	1,500
Realisable Value of Scrap	1,300
Amortised cost of fixtures	2,500

Renting of immovable Property Services

9. Mr. Shyam along with his family entered into agreement with a Municipality and had taken rooms on rent from it. The Municipality wanted to pass on the burden of Service Tax leviable on room rent to Mr. Shyam. However, Mr. Shyam challenged the validity of the demand for service tax. The primary contentions of Mr. Shyam were as follows:-

- (a) Under the agreement, there was no provision for payment of service tax. Therefore, the demand for payment of service tax was illegal. Further, service tax was payable by the Municipality and there was no authority with which the Municipality could pass it on to the Mr. Shyam.
- (b) Since they were small tenants, the Municipality must be treated as units of the State within the meaning of Article 289 of the Constitution of India and, therefore, levy of service tax on the property or on the income of the Municipality was unsustainable.

The Revenue contended that service tax was an indirect tax. Though primarily the person liable to pay the tax was Municipality, there was nothing in the law which prevented passing of the liability to Mr. Shyam.

You are required to examine whether liability to pay service tax can be passed on to Mr. Shyam in the instant case, with the help of a decided case law.

Storage and warehousing services

10. M/s Mehta Enterprise Limited was engaged in the manufacture of sugar. The Central Government directed him to maintain buffer stock of free sale sugar for the specified period. In order to compensate M/s Mehta Enterprise Limited, the Government of India extended buffer subsidy towards storage, interest and insurance charges for the said buffer stock of sugar.

Revenue issued a show cause notice to M/s Mehta Enterprise Limited raising the demand of service tax alleging that amount received by M/s Mehta Enterprise Limited as buffer subsidy was for the services covered within the definition of 'storage and warehousing services'.

Briefly discuss, with reference to case law, whether the show cause notice is sustainable in law.

Refund of service tax

11. Mr. Nand Kishore Garg is an exporter who exports the readymade garments to China. For the purpose of export he uses the General Insurance services and Customs House Agent's services and paid service tax on the services used. Further, Mr. Nand Kishore Garg fulfills the conditions specified for claiming refund of service tax. Mr. Nand Kishore wishes to claim refund electronically through ICES scheme. State the procedure to be followed by Mr. Nand Kishore Garg for electronic refund through ICES system.

Service tax registration

12. Mr. Rishabh is an interior decorator operating from Delhi, Mumbai, Chennai and Kolkata offices. The billing is centralised at Delhi office. Mr. Rishabh wants to register under service tax. You are required to advise him in this regard. Will your advice be different, if Mr. Rishabh does not have the system of Centralised billing.

Banking and Other Financial Services

13. Smith Bank Ltd., furnishes the following information relating to services provided and the gross amount received in the month of April, 2012:

	₹ (lakhs)
Banker to the issue	6
Locker rent	1
Merchant banking services	7
Asset Management (including portfolio management)	4
Service charges for services to the Government of India	1.7
Interest on overdraft and cash credits	2.3
Repayment of financial lease made by the customer to the bank ₹ 90 lakhs which includes a principal amount of ₹ 60 lakhs.	

Compute the value of taxable service under the Finance Act, 1994 and the service tax liability of Smith Bank Ltd.

Notes:

1. Smith Bank Ltd. is not eligible for small service provider's exemption.
2. All the above receipts are exclusive of service tax.
3. Point of taxation of all above receipts is in April, 2012.

Audit under VAT

14. What are the various types of audits prescribed under VAT provisions?

Incentives under VAT

15. Briefly explain different modes of incentives under VAT and their suitability for VAT regime.

Computation of VAT

16. Shiv Ltd. of Madhya Pradesh made a total purchases of input and capital goods of ₹ 55,00,000 during the month of January, 2012. The following further information is available:

- (i) Goods worth ₹ 9,00,000 were purchased from West Bengal on which C.S.T. @ 2% was paid.
- (ii) The purchases made in January, 2012 include goods purchased from unregistered dealers amounting to ₹ 21,50,000.
- (iii) It purchased capital goods (not eligible for input credit) worth ₹ 9,50,000 and those eligible for input credit for ₹ 9,00,000.
- (iv) Sales made in Madhya Pradesh during the month of January, 2012 is ₹ 10,00,000 on which VAT @ 12.5% is payable.

Assuming that all purchases given are exclusive of tax and VAT @ 4% is paid on them, calculate

- (i) the amount of input tax credit available for the month of January, 2012
- (ii) VAT payable for the month of January, 2012 and
- (iii) input tax credit carried forward.

Note: The input VAT credit on eligible capital goods is available in 36 equal monthly installments.

Refund under Customs

17. Malhotra Ltd. imported certain parts of a machine and filed a Bill of Entry. Malhotra Ltd. paid the higher duty in ignorance of a notification which allowed him the payment of duty at a concessional rate.

Later Malhotra Ltd filed a refund claim under Section 27 of the Customs Act, 1962 by producing the certificate issued by the Chartered Accountant (CA) to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person. The refund claim was rejected by the department as there was no other evidence other than the certificate issued by CA.

Discuss with reference to decided case law if any whether the stand taken by the Department is correct in law.

Provisional assessment of duty

18. Mr. Krishna Bhansali, an importer has imported some garments from Paris on 02.04.2012. He is unable to make self-assessment under section 17(1) of Customs Act and hence has made a request in writing to the proper officer for Provisional assessment. Can he apply for Provisional assessment? Will your answer be same had he imported the goods on 10.12.2011.

Valuation under Customs

19. Jagat Corporation Limited imported some goods from US .The details of the transaction are as follows:-

<i>Authority</i>	<i>Rate of exchange</i>
<i>CBEC</i>	<i>1 US \$=Rs 50</i>
<i>RBI</i>	<i>1 US \$=Rs 49.10</i>

CIF value of the goods is \$ 1,50,000

Rate of basic custom duty is 10%

Rate of education cess is 2%

Rate of secondary and higher education cess is 1%

If similar goods were manufactured in India, excise duty payable as per Tariff is 12%.

Calculate assessable value and total duty payable thereon.

Penalty under Customs

20. Mr. Henry was the managing director of a company, which had set up a unit in the Cochin Export Processing Zone for manufacture of certain equipments for cent percent export. On the basis of the relevant notifications, the company was entitled to import capital goods and claim benefit of duty exemption on proof of total export. With the passage of time, the business of the company fell and it went into liquidation. In the mean while, the customs authorities issued a notice to show cause against confiscation, in terms of Section 111(o) of the Customs Act, 1962, and in terms of the bond executed by them and also against imposition of penalty, on the company and its directors under Section 112 of the Act. This was on the premise that the Assistant Commissioner of Customs had reported that neither the capital goods nor the raw materials and other goods were used in the production of goods for export in terms of Notification No. 340/86, dated 13-6-1986 and in terms of the bond executed by the company.

Briefly discuss, with reference to case law, whether the show cause notice imposing penalty under section 112 is sustainable in law.

SUGGESTED ANSWERS/HINTS

- No, the show cause notice is not sustainable in law. The facts of the given case are similar to case of *Grasim Industries Ltd. v. UOI 2011 (273) E.L.T. 10 (S.C.)*. The Apex Court observed that manufacture in terms of section 2(f) includes any process incidental or ancillary to the completion of the manufactured product. This 'any process' can be a process in manufacture or process in relation to manufacture of the end product, which

involves bringing some kind of change to the raw material at various stages by different operations. The process in relation to manufacture means a process which is so integrally connected to the manufacturing of the end product without which, the manufacture of the end product would be impossible or commercially inexpedient.

However, in the present case, it is clear that the process of repair and maintenance of the machinery of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, (the end product). The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process.

Hence, it held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant does not amount to manufacture.

2. Yes, the rejection order passed by Settlement Commission is valid in law. The facts of the given case are similar to case of *Icon Industries v. UOI 2011 (273) E.L.T. 487 (Del.)*. In the instant case, The High Court noted that certain riders have been provided in section 32E(1) of the Central Excise Act, 1944 for entertaining applications for settlement. Clause (a) of first proviso clearly lays down that unless the applicant has filed returns, showing production, clearance and Central Excise duty paid in the prescribed manner, no such application shall be entertained.

The Court referred the case of *M/s. Emerson Electric Company India Pvt. Ltd.* wherein it was held that although section 32E(1) does not refer to rule 12 of the Central Excise Rules, 2002 under which ER-1/ER-3 returns are prescribed, since the said returns contain details of excisable goods manufactured, cleared and duty paid in the prescribed manner, the said return can be deemed to be the 'return' referred to in section 32E(1). Hence, the concept of return has to be understood in context of rule 12 of the Central Excise Rules, 2002. However, in case of consolidated returns filed in the instant case, the applicant would not be able to indicate 'duty paid' in the prescribed manner (or even in any manner) and question would continue to agitate about the details of production and clearance to be filled in such belated returns.

Considering the above discussion, it rejected the submission of the petitioner that filing of consolidated return covering all the past periods would serve the purpose. Hence, it held that a consolidated return filed by the assessee after obtaining registration, but for the period prior to obtaining registration, could not be treated as a return under clause (a) of first proviso to section 32E(1).

3. The question whether for the purpose of computing interest on delayed refunds under section 11BB, the period commences with the date of receipt of application for refund or date on which the order of refund is made was examined by the Apex Court in the case of *Ranbaxy Laboratories Ltd. v. UOI 2011 (273) E.L.T. 3 (SC)*. The Apex Court observed that interest under section 11BB becomes payable, if on an expiry of a period

of three months from the date of receipt of the application for refund, the amount claimed is still not refunded.

The Apex Court further noted that Explanation appearing below the proviso to section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner/Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under section 11B(2). It is apparent that the explanation does not have any bearing or connection with the date from which interest under section 11BB becomes payable and does not postpone the said date.

In the light of the aforesaid discussion, the Supreme Court elucidated that section 11BB of the Central Excise Act, 1944 comes into play only after an order for refund has been made under section 11B. However, the liability of the revenue to pay interest under section 11BB commences from the date of expiry of three months from the date of receipt of application for refund under section 11B(1) and not on the expiry of the said period from the date on which order of refund is made.

4. (a) The said statement is not valid. With effect from 01.03.2012 vide *Notifications Nos. 24-29 CE (NT) all dated 05.12.2011*, the export procedures for Nepal has been amended. The procedures prescribed for export under claim for rebate (Rule 18 of Central Excise Rules, 2002) vide *Notification No. 19/2004 CE (NT) dated 06.09.2004* and export without payment of duty under bond (Rule 19 of Central Excise Rules, 2002) vide *Notifications Nos. 42 to 44/2001 CE (NT) all dated 26.06.2001* would apply to Nepal as well. This has been done in view of the revised treaty between India and Nepal.
- (b) The said statement is not valid. Rule 5 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has been amended vide *Notification No. 13/2012-CE (NT) dated 17.03.2012* to, inter alia, provide that the manufacturer, receiving goods at concessional rate of duty, has to submit a quarterly return instead of a monthly return.
5. The goods kept in a warehouse for being exported can be diverted by Mr. Subodh Mishra for home consumption in the following manner:
 - (i) With the permission of the Deputy or Assistant Commissioner of Central Excise, the goods can be cleared for home consumption on invoice prepared under rule 8 on payment of duty, interest and any other charges on TR-6 challans. Necessary entries are to be made in the export warehouse register maintained by the exporter in the warehouse.
 - (ii) Credit will be permitted in the Running Bond Account equivalent to the duty involved in the goods so diverted, which shall not exceed amount of duty debited on the basis of ARE-3 on which such goods were received in the warehouse.

- (iii) Goods can also be diverted for home consumption even after clearance of goods from warehouse under ARE- 1. The documents will be cancelled as per *Notification No. 46/2001 CE (NT) dated 26.6.2001* as amended. The intimation of such cancellation is to be given to Deputy/Assistant Commissioner having jurisdiction over the warehouse. Credit in Running Bond Account will be permitted in the same manner as mentioned above.
 - (iv) The exporter has to pay an interest @ 24% p.a. on the amount of duty payable on such goods from the day of clearance from the factory of production or any other premises approved till the date of payment of duty and clearance.
6. (a) The said statement is not valid. Rule 3(5A) of the CENVAT Credit Rules, 2004 has been amended vide *Notification No. 18/2012-CE (NT) dated 17.03.2012* which provides that if the capital goods are cleared as waste and scrap, the manufacturer/provider of output services shall pay an amount equal to:-
- (i) CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified for each quarter of a year or part thereof from the date of taking the CENVAT Credit.
- or
- (ii) Duty leviable on transaction value.
- whichever is higher.
- (b) The said statement is absolutely valid. Rule 4 of the CENVAT Credit Rules, 2004 has been amended vide *Notification No. 18/2012-CE (NT) dated 17.03.2012* to provide that CENVAT credit in respect of inputs may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.
7. Calculation of duty liability under *Notification No. 8/2003*.
- Gross sales turnover is ₹ 1,95,10,000 which includes excise duty and VAT.
- For first 150 lakh clearances , excise duty is Nil and VAT is 1%.
- Therefore, VAT on first ₹ 150 lakh clearances = ₹ 1,50,000.
- For Balance sales (including excise duty and VAT)
- $$= ₹ 1,95,10,000 - (1,50,00,000 + 1,50,000) = ₹ 43,60,000$$
- $$\text{VAT} = 43,60,000 \times 1/101 = ₹ 43,168 \text{ (rounded off)}$$
- Therefore, balance sales excluding VAT but including excise duty
- $$= ₹ 43,60,000 - 43,168$$
- $$= ₹ 43,16,832$$

Hence, excise duty (including 2% education cess and 1% secondary and higher education cess) = ₹ 43,16,832 x 12.36/112.36 = ₹ 4,74,866.89

Total duty payable = ₹ 4,74,866.89 or ₹ 4,74,867 (rounded off)

8. Cost of Production for purposes of Captive Consumption is determined as per 'Cost Accounting Standard (CAS)-4: Cost of Production for Captive Consumption' issued by ICWAI [CBEC Circular No. 692/8/2003 dated 13-2-2003]. Different elements of cost have been treated as per CAS-4.

Particulars	Amount (₹)	
Direct Material Consumed		
Purchase Price	35,000	
Less: Excise duty available as credit (Note-1)	<u>1,800</u>	33,200
Direct Wages & Salaries		19,500
Consumable stores and repairs		5,700
Research and Development Costs		3,800
Administrative overheads		5,300
Amortised cost of fixtures		<u>2,500</u>
Total		70,000
<u>Less: Realised value of Scrap</u>		<u>(1,300)</u>
Cost of production		<u>68,700</u>
Assessable Value (₹ 68,700 x 110%) (Note - 3)		<u>75,570</u>

Notes:

1. As per CAS-4, excise duty of which credit is available, shall be deducted from the cost of material consumed.
 2. Selling and distribution Overheads doesn't form part of Cost of Production and hence ignored.
 3. As per Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods.
9. Yes, the liability to pay service tax can be passed on to Mr. Shyam in the instant case. The facts of the given case are similar to the case of *Kishore K.S. v. Cherthala Municipality 2011 (24) S.T.R. 538 (Ker.)* In the instant case, the High Court rejected the contentions of the assessee and opined as under:-

- (a) As regards the contention that there was no mention of the service tax liability in the contract, the Court held that this is a statutory right of the service provider/Municipality by virtue of the provisions under law to pass it on to the tenants. It is another matter that they may decide not to pass it on fully or partly. It is not open to the petitioners to challenge the validity of the demand for service tax, in view of the fact that service tax is an indirect tax and the law provides that it can be passed on to the beneficiary. Hence, the service tax can be passed on by the service provider i.e. Municipality.
- (b) The word "State" in Article 289 does not embrace within its scope the Municipalities. Hence, when service tax is levied on the Municipality there is no violation of Article 289. Moreover, Municipality has not raised the contention that there was a violation of Article 289.

Hence, it was held that Municipality can pass on the burden of service tax to the assessee. Thus, in case where rooms have been rented out by Municipality, it can pass the burden of service tax to the service receivers, that is Mr. Shyam, in the present case.

10. No, the show cause notice is not sustainable in law. The facts of the given case are similar to case of *CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H)*. The High Court noted that apparently, service tax could be levied only if service of 'storage and warehousing' was provided. Nobody can provide service to himself. In the instant case, the assessee stored the goods owned by him. After the expiry of storage period, he was free to sell them to the buyers of its own choice. He had stored goods in compliance to directions of Government of India issued under the Sugar Development Fund Act, 1982. He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. Hence, the act of assessee could not be called as rendering of services.

The High Court upheld the Tribunal's decision that just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the assessee becomes 'storage and warehouse keeper' nor the Government of India becomes their 'client' in this regard. Therefore, the storage of specific quantity of free sale sugar could not be treated as providing 'storage and warehousing' services to the Government of India. Hence service tax is not chargeable on the buffer subsidy provided by the Government for storage of free sale sugar, under the category of 'storage and warehousing services'.

11. The following procedure is to be followed by Mr. Nand Kishore Garg for electronic refund through ICES system.
 - (a) Mr. Nand Kishore Garg should
 - (i) have a bank account and also a central excise registration or service tax code

number* and the same should be registered with Customs ICES, and

- (ii) declare his option to avail service tax refund on the electronic shipping bill/bill of export while presenting the same to the proper officer of Customs.

*Note: Service tax code number shall be obtained by filing a declaration in Form A-2 to the jurisdictional Assistant Commissioner / Deputy Commissioner of Central Excise.

- (b) Service tax paid on the General Insurance services and Customs House Agent's services eligible as refund under this exemption should be calculated electronically by the ICES system, by applying the rate specified in the schedule against the said goods, as a percentage of the FOB value.
 - (c) Refund should be deposited in the bank account of Mr. Nand Kishore Garg.
 - (d) Further, Mr. Nand Kishore Garg who has claimed the refund electronically cannot claim the refund again on the basis of documents.
 - (e) Minimum service tax refund for an electronic shipping bill is ₹ 50.
12. Rule 4 of Service Tax Rules, 1994 provides that where a person, liable for paying service tax on a taxable service, inter alia, provides such service from more than one premises or offices and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located.

Hence, Mr. Rishabh should apply for centralised registration for Delhi office where centralised billing is done. He should submit the application for registration before the jurisdictional commissioner of Central Excise.

If Mr. Rishabh does not have the system of Centralised billing, then he has to make an application for registration for each of the offices separately:-

- (i) within 30 days from the date on which service tax is levied.

or

- (ii) within 30 days from the date of commencement of business whichever is later, to the concerned Superintendent of Central Excise having jurisdiction.

Also, the following documents have been prescribed by the CBEC vide *Order no. 2/2011 - ST dated 13.12.2011 - F.No. 137/120/2011 - ST* to be submitted along with the application for registration under service tax:

- (a) Copy of Permanent Account Number (PAN)
- (b) Proof of Residence
- (c) Constitution of the Applicant
- (d) Power of Attorney in respect of authorized person (s).

The above documents must be submitted within a period of 15 days from the date of filing of the application, otherwise the application may be rejected. The time limit of seven days within which the registration is to be granted by the Superintendent of Central Excise/Service Tax would be reckoned from the date the application for registration is complete in all respects.

13. Calculation of value of taxable services of Smith Bank Ltd.

Particulars	₹	₹
Amount received for acting as banker to an issue		6,00,000
Amount received as locker rent		1,00,000
Amount received for merchant banking services		7,00,000
Amount received for asset management (including portfolio management) services		4,00,000
Service charges for services provided to Government of India (Note – 1)		Nil
Interest received on overdraft and cash credits (Note – 2)		Nil
Installment amount received towards repayment of financial lease	90,00,000	
Less: Principal amount included in the above installments	<u>60,00,000</u>	
Interest on financial lease	30,00,000	
10% of the interest amount [₹ 30,00,000 × 10%] (Note – 3)		<u>3,00,000</u>
Total value of taxable services		<u>21,00,000</u>
Service tax payable thereon @ 12%		2,52,000
Education Cess @ 2%		5,040
Secondary and Higher Education Cess @ 1%		<u>2,520</u>
Total service tax payable including Cess		<u>2,59,560</u>

Notes:

1. Service charges for banking and other financial services provided to Government of India are exempt from service tax (Notification No. 13/2004 ST dated 10-09-04).
2. Interest received on cash credit and overdraft is exempt from service tax (Notification No. 29/2004 ST dated 22-09-2004).
3. Service tax is payable only on 10% of the interest on financial lease. The interest is the difference between the installment paid towards repayment of the lease amount and the principal amount contained in such installment (Notification No. 4/2006 ST dated 01-03-2006).
4. For the month of April, 2012 applicable rate of service tax is 12%.

14. Various types of audits prescribed under VAT provisions are given below:

- (a) **Departmental Audit:** In this audit, correctness of information supplied under self-assessment system is checked. A certain percentage of the dealers are taken up for audit every year on a scientific basis. If during the course of such audit tax evasion is detected, the previous records of the concerned dealer may also be called for the purpose of audit. Under this audit authorized officers of the Department visit the business place of the dealer to conduct the audit. The auditors examine the correctness of the returns vis-à-vis the books of account of the dealer or any other information available with them. It is also worth mentioning here that the concerned auditors are equipped with the information gathered from various agencies such as suppliers, income tax department, excise and customs departments etc.
- (b) **Independent Professional Audit:** Since the Departmental Audit has not been able to curb the menace of tax avoidance and tax evasion to the desirable extent, the concept of independent professional audit by chartered accountants or cost accountants has been prescribed in some of VAT Acts in India. For instance, in Karnataka the dealer whose total turnover exceeds ₹ 60 lakhs in any year is required to get his accounts audited in respect of such year. Similarly, in Maharashtra and Rajasthan, the dealer whose turnover exceeds ₹ 40 lakhs in any year is required to get his accounts audited in respect of such year.

15. Different modes of incentives under VAT are briefly described below:-

- (a) **Exemption from tax:** Under this mode incentives are given by way of exemption from tax. The eligible industry is not required to pay any sales tax on purchases of raw materials as well as on sales of finished product. The advantage of this mode is that the unit is not required to pay any tax and thus its realisation improves. This brings it in a position to stand the competition. The amount of exemption is to be availed within a specified period of time. The exemption so allowed ceases either with the expiry of exemption period or the exemption amount whichever occurs first.
- (b) **Deferment of tax liability:** Under this mode eligible industry is at par with any other normal unit. It collects the tax on sale of finished goods and also pays the tax to its vendors on the purchases of raw materials etc. However, such eligible unit or industry is not required to pay the collected tax to the Government immediately. The tax liability is assessed by applying the normal provision. However, payment of tax to the Government is deferred for particular period. Moreover, the liability is required to be paid in prescribed installments.
- (c) **Remission of Tax:** Under this mode, an eligible industry is allowed to collect tax at an appropriate rate but is not required to pay the same. The unit is required to file periodical return and show the tax liability. The tax liability as per return is deemed to have been paid. The input tax paid on purchases by the unit is given as refund immediately after filing of return.

Comparative assessment of above three modes under VAT Regime: Out of the above three modes, the exemption mode is not suitable for VAT Regime because it breaks the VAT chain. The dealers can not issue tax invoices and pass on the credit. On the other hand, under Deferment Mode as well as Remission Mode, the VAT invoices showing VAT liability separately can be issued by the dealer which results in maintenance of VAT chain.

16.

	Particulars	₹	₹
A.	Purchases made in January, 2012		55,00,000
	Less: (i) Inter-State purchases (input credit not available)	9,00,000	
	(ii) Purchase from unregistered dealer (input credit not available)	21,50,000	
	(iii) Capital goods (not eligible for input credit)	<u>9,50,000</u>	<u>40,00,000</u>
	Total purchases eligible for tax credit		<u>15,00,000</u>
B.	Input tax credit available		
	VAT credit on input @ 4%		
	4% of (₹ 15,00,000 – Rs.9,00,000)		
	i.e. 4% of ₹ 6,00,000		24,000
	VAT credit on eligible capital goods		
	$(4\% \text{ of } ₹ 9,00,000) \times \frac{1}{36}$		<u>1,000</u>
	Input credit available for January, 2012		<u>25,000</u>
C.	VAT on sales @ 12.5% of ₹ 10,00,000		1,25,000
	Less: Input tax credit		<u>25,000</u>
	Net VAT payable		<u>1,00,000</u>
	Input tax credit carried forward to February, 2012		<u>Nil</u>

17. Yes, the Department's plea is justified in law. The facts of the given case are similar to the case of *CCus., Chennai v. BPL Ltd. 2010 (259) E.L.T. 526 (Mad.)*. The High Court noted that section 27 of the Customs Act mandates on the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.

However, in the given case, the assessee had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim. The certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the assessee could not be granted refund merely

on the basis of the said certificate. Therefore, Chartered Accountant's certificate alone is not sufficient evidence to rule out the unjust enrichment under customs.

In the light of the above discussion, it can be inferred that Malhotra Ltd. is not entitled for refund claim.

18. Section 18(1) of Customs Act has been amended vide Finance Act, 2011 to provide that the importer may make a request for assessment of goods by the officer when he is not in a position to self-assess. Section 18(1) provides as follows:-

Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46, —

- (a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or
- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
- (c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
- (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

Hence, Mr. Krishna can apply for Provisional assessment for the garments imported on 02.04.2012. However, had he imported the goods on 10.12.2011, he could not apply for Provisional assessment as Prior to Finance Act, 2011 importer was not eligible to apply for Provisional assessment. Only Proper Officer was authorized to direct Provisional assessment of duty in certain specified situations.

19. Computation of assessable value and total custom duty payable:-

Particulars	
CIF Value	\$1, 50,000
Add : Landing charges @ 1% of CIF value (Note – 1)	<u>\$ 1, 500</u>
	<u>\$,151,500</u>
Assessable value (in ₹) = \$1,51,500 × ₹50 (Note -2)	₹ 75,75,000
Add : Basic custom duty @ 10% (₹ 75,75,000 × 10%)	<u>₹ 7,57,500</u>
	₹ 83,32,500

Add : Countervailing duty ($\text{₹ } 83,32,500 \times 12\%$)(Note-3)	<u>₹ 9,99,900</u>
	₹ 93,32,400
Education cess [$(\text{₹ } 7,57,500 + \text{₹ } 9,99,900) \times 2\%$]	₹ 35,148
Secondary and Higher Education Cess $(\text{₹ } 7,57,500 + \text{₹ } 9,99,900) \times 1\%$	<u>₹ 17,574</u>
Total custom duty payable ($\text{₹ } 7,57,500 + \text{₹ } 9,99,900 + \text{₹ } 35,148 + 17,574$)	<u>₹ 18,10,122</u>

Notes :-

- (1) Landing charges at the rate of 1% of the CIF value of the imported goods, shall be added, whether ascertainable or not [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 - (2) Applicable exchange rate is ₹ 50/- per \$ as notified by CBEC because explanation to section 14(1) provides that rate of exchange shall be the rate as notified by CBEC.
 - (3) Education Cess and Secondary and higher education cess on CVD has been exempted vide *Notification No. 13 & 14/2012 -Customs both dated 17.03.2012*.
20. No, the show cause notice imposing penalty under section 112 of the Customs Act, 1962 is not sustainable in law. The facts of the given case are similar to case of *O.T. Enasu v. UOI 2011 (272) E.L.T. 51 (Ker.)*

The High Court noted that under sub-clause (ii) of clause (a) of section 112, the liability to penalty is determined on the basis of duty sought to be evaded. Therefore, the jurisdictional fact to impose a penalty in terms of section 112(a)(ii) includes the essential ingredient that “duty was sought to be evaded”. The concept of evading involves a conscious exercise by the person who evades. Therefore, the process of “seeking to evade” essentially involves a mental element and the concept of the status “sought to be evaded” is arrived at only by a conscious attempt to evade.

The non-observance of the conditions of import of the goods in question gives the jurisdiction to impose an order of confiscation in terms of Section 111(o) of the Act. However, while considering the question as to whether penalty has to be imposed on any person for any commission or omission, which has rendered the goods liable for confiscation under Section 111(o), it has to be decided as to whether the goods became liable for confiscation on account of any act of omission or commission attributable to the person in question. Merely because a person is the Managing Director of a company, he would not be fastened with penalty, unless it is shown that he had, by his commissions or omissions, led the goods to be liable for confiscation.

In view of the above discussion, the High Court inferred that unless it is established that a person has, by his omissions or commissions, led to a situation where duty is sought to be evaded, there cannot be an imposition of penalty in terms of section 112(a)(ii) of the Act.

Hence Mr. Henry, the managing director could not be made liable to penalty under section 112 of customs Act, 1962.