Service Tax [FA, 1994 (Chapter-V)]

Sec 64

Extent :

ST Provisions will **not apply in J&K** → Sr provided in J& K will not attract ST.

Sec 65

Definitions:

Sec 65(105): Taxable Service

Taxable Service means any service provided or to be provided

To ………………..

By ………………..

In relation to ………………..

Sec 65-A

Classification of Service *[=Rule 3 of GIR in CETA]*

One service – classifiable into more than 1 category

i) Choose specific over general

ii) If Composite service – determine which service provides the essential character and classify composite service into that

iii) Choose first in numerical order

Sec 66

CHARGING SECTION

All taxable Services – ST @ 12.36%

- **Taxable Event**: **Rendering of Service**
  - **Date of Rendering/Providing Sr → Sr Non-taxable -→ No ST payable**
  - **Date of Rendering/ Providing Sr → Sr taxable -→ ST payable**

(Applicable Rate = As applicable on date of rendering of service)

- **Payment of ST: As and when Payment is received** (ST is payable only on the amount received ---- ***any amount received whether before or after provisioning of Sr shall attract ST upon its receipt*** if it is received in relation to taxable service)---- **Rule 6 of STR, 1994**
  - **Individual / Prop Firm / Partnership Firm → Quarterly Basis (Manual-within 5 Days E-Payment- within 6 days) -- Last quarter of Year—by 31st March**
  - **Other Assessees → Monthly Basis (Manual-within 5 Days E-Payment- within 6 days) -- Last Month of Year—by 31st March**
    - **Big Assessee [ST = > 50 lakhs (PY or CY)]: Mandatory e-payment**

⇒ No concept of PLA in ST. Payment through GAR-7.

Sec 67

Valuation of Goods

Situation	TAXABLE VALUE
Sec 67(1)(i) Where **total consideration is "monetary consideration"**	**TV= GAC** (Gross Amount Charged) (Exclusive of ST)
Sec 67(1)(ii) Where **consideration is in kind** ["non-monetary consideration"] → Wholly in Kind → Partly in Kind	**TV= Monetary Equivalent of "non-monetary consideration"** **Rule 3 of STVR, 2006** **Method-1**: TV= GAC by service provider for similar service provided to third party

	Method-2: TV= [Monetary Consideration + Mkt Value of Non-Monetary Consideration] ***[but it shall not be less than the cost of provisioning of service]***
Sec 67(1)(iii) Where **consideration is "not-quantifiable"** .	**TV= Value determined in prescribed manner** [no manner prescribed – but practically best judgment assessment].

⇒ Free Service → Sec 67 not applicable → No ST payable

Rule 5 of STVR, 2006

Cost/Exp incurred by Service provider and then recovered from sr receiver --- treatment of such recovery in valuation

i) **Where such cost/exp was incurred in the capacity of "PURE AGENT" of sr receiver** *[Pure Agent:-- 4 features:* *i) Separate agreement to act as pure agent* *ii) Never gain title over the goods/services so procured* *iii) Does not use such goods/services* *iv) Recovery cost on actual basis]*	→ **Not includible**
ii) **Otherwise**	→ **Includible**

Rule 7 of STVR, 2006

Sr provider outside India --------------→ Sr receiver in India

↓

Liable for pymt of ST (Reverse Charge)

TV = Actual total consideration received

In case of **services partly performed in India** but treated as imported in India (in terms of **Rule 3(ii) of Taxation of Services (Provided from outside India but received in India) Rules, 2006**:

--- **Total Consideration received shall form part of TV** (even that part which relates to that part of activity which is performed outside India)

Sec 68

Person liable for payment of ST with CG

(1) Generally, Service Provider is liable

(2) Certain services are under **REVERSE CHARGE**

i) **Insurance Auxiliary Sr** of Insurance Agent	→ Insurer
ii) **Sr provided by a person from outside India**	→ Sr receiver in India
iii) **GTA Service** – when either Consignor or Consignee is of "specified category"	→ Person paying the freight to GTA
iv) **Business Auxilliary Sr of Distribution of Mutual Fund**	→ Mutual Fund or Asset Management Company
v) **Sponsorship service**	→ Body Corporate or Firm receiving such service

Sec 69

Registration --- by whom

i) **Person liable for pymt of ST**	→ Within 30 days of service becoming taxable if business is commenced later on, then within 30 days of commencement of business.
ii) **Sr exempt – no liability for pymt of ST – Aggregate value of service > 9 lakhs** *(Amended in Year 2008)*	→ Within 30 days of value exceeding 9 lakhs
iii) **Input Sr Distributor**	→ Within 30 days of commencement of business

Reg Application: **ST-1**
Reg Certificate: **ST-2** (shall be granted within 7 days)

Premises to be registered

i) **Single Premise, Single Service**	→ Single Registration
ii) **Multiple Premises, Single Service**	→ CBS/CAS not in existence -→ Reg all premises **[with SCE]** → CBS/CAS in existence -→ Reg only those premises where CBS/CAS is in existence **[with CCE]** *… At present, Centralized Reg Facility available to person falling under "Reverse Charge"*

Assessment System: **Self-Assessment System**
[If ST is not-levied/not paid // short-levied /short-paid / erroneously refunded --- SCN by CEO u/s 73 (Normal Case- 1 Year or Fraud Year – 5 Years)]

If assessee unable to do self-assessment **Provisional Assessment** (R-7 of CER, 2002 shall be applicable – but PD Bond need not be executed) --- **Rule 6(4) & (5) of ST Rules, 1994**

Sec 70

Returns --- by whom

i) **Person liable for pymt of ST**	→ **Half-yearly Basis** (25 days) **Form of Return**: **ST-3**
ii) **Sr exempt – no liability for pymt of ST – Aggregate value of service > 9 lakhs**	→ **Half-yearly Basis** (25 days) **Form of Return**: **ST-3**
iii) **Input Sr Distributor**	→ **Half-yearly Basis** (by end of following month) *[His Cenvat Return is treated as ST Return]*

 # At present, ST return can be revised to correct error or omission – **REVISED RETURN** *can be filed within* **90 days**. *(Amended in Year 2008)*

If return is revised, then Relevant Date for the purposes of sending SCN shall be "Date of filing of revised return" [Rule 7-B of STR, 1994]

Sec 70 has been amended by FA, 2007. It provides for payment of late fees as may be prescribed. However, the maximum amount of such fee is however Rs 2000.

Rule 7C. Amount to be paid for delay in furnishing the prescribed return.-

Period of delay	Late fee payable
(i) 15 days from the due date	Rs 500/-
(ii) beyond 15 but not later than 30 days from the due date	Rs 1,000/-
(iii) beyond 30 days from the due date	Rs 1000 ***plus*** Rs 100 for every day from the 31st day till the date of furnishing the said return

Provided that the total amount of late fee shall not exceed the amount of ST self-assessed.

Provided also that *[inserted in Year 2008]*

⇒ where the gross amount of **ST payable is Nil**,

⇒ the **CEO may**, on being satisfied that there is sufficient reason for not filing the return, **reduce or waive the late fee**.

❑ **Determine the amount of late fee payable alongwith return filed belatedly:**

	ST liability for the Half-year	Delay in filing of return	Late Fee payable			
			Fee as per prescribed scale	Max Amt. as prescribed in Rules	Max Amt. as stated in Sec	Net Payable Amount
Case-A	3,000/-	30 days	1,000/-	3,000/-	2,000/-	1,000/-
Case-B	1,500/-	60 days	4,000/-	1,500/-	2,000/-	1,500/-
Case-C	3,000/-	60 days	4,000/-	3,000/-	2,000/-	2,000/-
Case-D	10,000	90 days	7,000/-	10,000/-	2,000/-	2,000/-
Case-E	Nil	90 days	7,000/-	Nil	2,000/-	Nil

Sec 66-A

Import of Service [Sr provided from outside India and received in India]

--- Sr recipient shall be liable for paying ST

--- Sr recipient shall be treated as if he has provided such service.

Taxation of Service (Provided from outside India and received in India) Rules, 2006

Rule 3

i) **Immovable Property Criteria**	→ Immovable property situation in India
i) **Performance Based Criteria**	→ Service is physically performed in India (whether wholly or partly) New Proviso: *[Inserted in Year 2008]* *[Management/Maintenance/Repair Service +* *Technical Testing & Analysis Service +* *Technical Inspection & Certification Service]* → *Provided remotely through INTERNET* → *In relation to GOODS + MATERIAL + IMMOVABLE PROPERTY Situated IN India*

	⇒ *Such sr shall be treated as performed in India.*
iii) Residuary **[Excluding 2:** **a) Foreign Travel Air)** b) **Travel by Cruise Service]**	→ Provided in relation to Business or Commerce → Sr recipient is located in India

Rule 4 Service recipient shall get himself registered.

Rule 5 **The service imported into India** for which service recipient is liable for payment of ST **shall not be treated as "Output Service"** for the purpose of using cenvat credit of other services for payment of such amount.

Export of Service

Export of Service

[Export of Service Rules, 2005]

Rule 3

i) Immovable Property Criteria	→ Immovable property situation outside India
i) Performance Based Criteria	→ Service is physically performed outside India (whether wholly or partly) New Proviso: *[Inserted in Year 2008]* *[Management/Maintenance/Repair Service +* *Technical Testing & Analysis Service +* *Technical Inspection & Certification Service]* → *Provided remotely through INTERNET* → *In relation to GOODS + MATERIAL + IMMOVABLE PROPERTY Situated OUTSIDE India* ⇒ *Such sr shall be treated as performed outside India.*
iii) Residuary **[Excluding 2:** **a) Foreign Travel class)** **b) Travel by Cruise Service]**	→ Provided in relation to Business or Commerce ---- Sr receiver is located outside India → Other cases ---Sr receiver is located outside India at the time order for provisioning is made

Additional Conditions for all 3 categories:

1) ***Service must be provided from India and used outside India***
2) ***Payment must be received in Foreign Exchange.***

How to export service? --- 2-Options

Export without payment of ST (**Rule 4** of Export of Service Rules, 2005)

Pay ST and then claim rebate (**Rule 5** of Export of Service Rules, 2005)
---*[Rebate is also admissible of related input and input service]*

Cenvat Credit

CCR, 2004 *[Refer separate Summary]*

i) Rule 2: Definitions *[Amended in Year 2008—Definition of OUTPUT SERVICE]*
ii) Rule 3(1): **Spl CVD credit not available**
iii) Rule 3(5): **Removal as such** *[Amended in Year 2008]*
iv) Rule 6: **Providing both exempted services and other services** *[Amended in Year 2008--- Rule 6(3) Amended]*

Some Exemptions

All taxable services are exempt under following situations:

1) ***Provided to United Nation or International Organisation;***
2) ***Provided to SEZ Unit or Developer of SEZ;***
3) ***Provided to RBI;***
4) ***Provided by RBI;***
5) ***Provided to Foreign Diplomatic Missions / Consulates;***
6) ***Provided for personal use of member (or his family) of a Foreign Diplomatic Mission/ Consulates;***
7) ***Provided by Business Incubator;***
8) ***Provided by Incubatee** (exemption for 3 years – Each year upto 50 lakhs only and that too when PY Services remain in limit of 50 lakhs)*

Special Exemption

SSI Exemption: 6/2005

Each year service upto* 10 lakhs *exempt *[Amended in Year 2008]*
if PY service rendered upto **10 lakhs.**

Conditions

i) *Exemption is optional;*
ii) *Exemption limit not for individual service or individual premise – aggregate value of 10 lakhs is exempt.*
iii) *No cenvat credit of Input+ Input Service + Capital goods can be availed till limit of 10 lakhs.*

Partial exemption in respect of goods and services involved in service: 12/2003
[applicable to all taxable service]

That part of value of service = Value of goods and material sold in course of service
Shall be exempt

Conditions:

i) *Invoice of service shall separately show the value of goods and material;*
ii) *Cenvat Credit of input shall not be availed [**However, Cenvat Credit of input service and capital goods can be taken]***

Exemption by way of ABATEMENT: 1/2006 [Master Exemption]
[applicable to certain taxable services – different % for different services]

Certain % of "Gross Amount Charged" Exempt

Basic Conditions:

i) *Cenvat Credit of input, input service and capital goods shall not be availed*
ii) *Exemption Notification 12/2003 is not availed.*

Sl No.	*Nature of Service*	*Abatment Allowed*	*Taxable Value*
(i)	Rent-A-Cab Scheme Operator's Servic	*60%*	*40%*
(ii)	Tour-Operator's Service → **Package Tour** [i.e., accommodation cum-transport, part of tour] → **Non-package Tour** [say, transport] → **Only accommodation booking**	 *75%* *60%* *90%*	 *25%* *40%* *10%*
(iii)	Mandap Keeper Service	*40%*	*60%*
(iv)	Convention services	*40%*	*60%*
(v)	Outdoor Catering	*50%*	*50%*
(vi)	Pandal & Shamiana Contractor's Service	*30%*	*70%*
(vii)	Commercial or Industrial Building Construction Service	*67%*	*33%*

(viii)	Residential Complex Construction Service	*67%*	*33%*
(ix)	Erection, Commissioning & Installation	*67%*	*33%*
(x)	Transport of goods in Containers by Rail	*70%*	*30%*
(xi)	Business Auxiliary Service in relation to production/processing of PARTS and ACCESSORIES which are used in the manufacture of "Cycles / Cycle Rickshaws / Hand-operated Sewing Machines."	*30%*	*70%*

Sec 73

Demand of ST

SCN for recovery of SCN [= Sec 11-A of CEA, 1944]

Sec 83

It states that **Sec 11-B of CEA, 1944 shall apply to ST refund also.**

Self-adjustment

Rule 6(3)

Advance received – ST paid –but subsequently service contract cancelled – service not provided

Service Tax paid can be self-adjusted subsequently at any point of time

Rule 6 (4-A) & (4-B)

Problem in self-assessment --- reasons other than (Interpretation of Law, Taxability, Classification, Valuation, Applicability of E/N)--- Assessee may paid excess ST

Service Tax paid can be self-adjusted subsequently at any point of time –however, intimation of such adjustment shall be given within 15 days of such adjustment

Limit on amount which can be Adjusted:

1) *Excess payment made by assessee centrally registered and having problem regarding receipts of details from the premises --- No limit*

2) *Other cases--- Adjustment of* **Rs 1,00,000** *for a month or quarter*

[Amended in Year 2008]

Rule 6 (1-A) *[Inserted in Year 2008]*

Any person may voluntarily Any Amount as ST in advance which can be adjusted subsequently

[this is basically concept of PLA introduced voluntarily – Under Excise, it is mandatory]

Give INTIMATION:

***Ist Intimation**: When advance payment is made*

***IInd Intimation**: When adjustment payment is made]*