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SERVICE TAX – CONCEPTS & PROCEDURES

Service tax is a tax on services provided. If there is no service, then there is no service tax. It is an indirect tax. The provisions of service tax are contained in chapter V of the Finance Act, 1994 and administered by the Central Excise Department. The word 'Service' is not defined in Finance Act, 1994.

APPLICABILITY OF SERVICE TAX:

- The Act extends to whole of India except the state of Jammu and Kashmir.
- Service tax not applicable on Export of services, subject to Conditions given in Export of service rules, 2005.

Illustration: Mr. J of Jammu and Kashmir is providing advertisement service in the state of Jammu and Kashmir as well as in other parts of India. Service tax is not applicable for services rendered in the state of Jammu and Kashmir. However, he is liable to pay service tax on those services which are rendered outside the state of Jammu and Kashmir.

Service tax liability is based on the place where the service has been rendered, but not the place from which the service is provided.

STATUTES GOVERNING THE LEVY OF SERVICE TAX:

The following are the sources provide provisions relating to service tax.

Service tax is governed by

- ❖ Finance Act, 1994.
- ❖ Rules
- ❖ Notifications
- ❖ Circulars/ Office letters
- ❖ Orders
- ❖ Trade notices

Various Rules in force

1. Service tax Rules (1994).
2. Service tax (Advance rulings) Rules 2003.
3. CENVAT Credit Rules (2004)
4. Export of Service Rules, 2005.

5. Service tax (registration of special category of persons) Rules, 2005.
6. Service tax (Determination of Value) Rules 2006.
7. Taxation of services (provided from outside India and received in India) Rules 2006
8. Works contract (Composition scheme for payment of Service Tax) Rules 2007

Rules are supplementary to carry out the provisions of the Act. Rules can never override the Act and cannot be in conflict with the same.

Notifications:

The Central Government issue notifications usually to

- To declare date of enforceability of service tax provisions
- Provides rules relating to service tax
- Make amendments therein
- Provide or withdraw exemption from service tax

Circulars/ office letter:

Circulars help to clarify the provisions of the Act and understand the real intension of the legislature.

Trade notices on service tax:

These are issued by Central Excise/ Service tax Commissionerates. The trade notices disseminate the contents of the notifications and circulars/ letters/ orders. Any assessee can apply for copies of trade notices.

RATE OF SERVICE TAX:

At present, the effective rate of Service tax is 10.36 %. The above rate comprises of Service tax @ 10 % on “Gross Value of taxable service”. Education cess [EC] @ 2 % on service tax amount. Secondary and Higher Education cess [SHE] @ 1 % on service tax amount.

TAXABLE SERVICE:

The Act provides the list of services to which the Act applies in section 65 (105) of the Act. At present there are 106 services covered under the service tax net.

TAXABLE VALUE:

Valuation under service tax is only with reference to the valuation rules namely **“Service Tax (Determination of Value) Rules, 2006”.**

TAXABLE EVENT IN SERVICE TAX:

- When service provider receives the advance from service receiver against taxable services.
- When services are rendered by service provider.

- When Services are rendered in certain cases as defined in sec 68 (2) read with rule 2(1)(d)

<u>TAX LIABILITY:</u>

Taxable event happens when taxable services are rendered. Tax liability taxes place as soon as payment for service is received. The payment may be received in advance (ie) before the execution of the service or in arrears (ie) after rendering the service. If service provider receives advance payment; tax liability to pay service tax arises.

<u>PERSONS LIABLE TO SERVICE TAX:</u>

- Any provider of taxable service whose aggregate value of taxable service received in any financial year exceeds Rs.10,00,000/-
- An input service distributor.
- Service receivers as specified in sec 68 (2) of Finance Act.

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

*Input service distributor means on office managing the business of manufacturer or producer of final products or provider of output services, which receives credit towards purchase of input services and issues invoice, bill or, challan for the purpose of distributing the credit of service tax paid.

1. The Input service distributor shall distribute Cenvat credit in respect of service tax, among its manufacturing units or among those providing output services.
2. The Input service distributor must ensure that such a distribution should not exceed the service tax paid.
3. In case of an input service is attributable to service use in a unit exclusively engaged in manufacture of exempted goods or exempted services, the such credit of service tax shall not be distributed.

<u>Illustration:</u> X ltd has a place of business at Chennai and is registered under Service tax in Chennai. He has factories at Trichy, Coimbatore with separate registrations and a unit in Hyderabad. X ltd make centralized purchases for its entire unit and distribute the input goods and services. It decides to distributes available tax on input services of Rs.20, 000/- in the suitable ratio (as the case may be) in the ratio 20:30:20:30.

Every input service distributor, distributing credit of taxable services should issue an invoice, a bill or challan signed by him or a person authorized by him for each of the recipient of credit distributed. The invoice or bill must be serially numbered.

*Services covered under section 68 (2): [Deemed service providers]

The following table summarizes such services and the person liable to pay service tax

Sl.no.	Nature of the service	Service Provider	Service Receiver	Person liable to pay tax
1	Insurance auxiliary service	Insurance agent	Insurance Company	Insurance Company
2	Service provided to a Person in India from outside India	Person outside India	Person in India	Person in India
3	Goods transport agency for transport of goods by road. Note: If the service receiver is individual, HUF etc., tax is payable by the Service provider (GTA)	Goods transport agency	Any registered Factory. Any company. Any corporation. Any registered Society cooperative society. Any registered dealer Of excisable goods. Any registered firm Or body corporate.	The service receiver or his agent.
4	Business Auxiliary Service – Mutual Fund distribution	Mutual fund Distributor of an agent	Mutual fund company	Mutual fund company
5	Sponsorship services	Any person	Body Corporate of firm	Body Corporate of firm

WHO IS LIABLE TO REGISTER ?

- Any provider of taxable service whose aggregate value of taxable service received in any financial year exceeds Rs.9,00,000/-
- An input service distributor is liable to register as per Notifn No: 26/2005 – ST dated 07/06/2005 as amended.
- Service receivers as specified in sec 68 (2) of Finance Act.

REGISTRATION PROCEDURES:

Any person liable to pay service tax has to register with the Superintendent of Central Excise within 30 days from the date of commencement of the business of taxable service.

Invoice should be issued within 14 days from the date of completion of taxable service or receipt of any payment towards value of taxable service.

Registration procedure under Service Tax:

Step 1: Apply for registration in Form ST – 1 to the Superintendent of Central Excise. Online application can also be made.

Step 2: Submit along with Form ST – 1 the following documents

- Permanent Account Number (PAN)
- Affidavit declaring the commencement of the services
- Copy of passport or ration card or any other document of residential proof.
- Passport size photograph of the assessee in case of individual and of partners in case of firm and of directors in case of a company.
- Partnership deed in case of firm.
- Memorandum and Articles of Association in case of company

Step 3: The Superintendent of Central Excise will grant a certificate of Registration in Form ST- 2 within 7 days of the date of receipt of application.

Step 4: Certificate of Registration can be surrendered if the assessee ceases to provide the taxable service for which he had been registered.

Where a service rendered from different location falling under different Commissionerates, multiple registrations are required, however, even in this case a single Registration is possible, with the permission from the Department, if the assessee maintains centralized accounting for multiple services provided from more than one premises. If the registration certificate issued by the department is lost, the assessee can make written request for duplicate registration certificate.

PAYMENT OF SERVICE TAX:

1. Service tax is payable only of Actual receipt of consideration. Where the service provider receives only a part of the total service charges, Service tax shall be paid on proportionately only on such part and not on the entire consideration. The balance service tax will have to be paid on receipt of consideration. Therefore the service tax is payable only on realized value and not on bill value.
2. Due dates for payment of service tax

Service provider	**Monthly/ Quarterly Due dates**	**Due date for the March and Quarter ending March**
Individuals and Firms	5th of the month following the quarter ended June, Sep, Dec.	31st March
Others	5th of the following month	31st March

3. In case of e- payment, due date shall be 6th of the respective month / quarter.
4. If last date for paying tax is a public holiday, tax may be paid on the next working day.
5. Tax is paid through GAR – 7 challan.
6. Big assesses with a service tax liability of Rs.50 lakhs and above should pay tax electronically.
7. **Interest in case of delayed payment of service tax.**
    - Delay in payment of tax attracts interest at the rate of 13 % p.a.
    - The interest shall be payable for the period by which payment of tax is delayed.

FILING OF RETURNS:

Returns are filed half yearly in Form ST – 3 [Form ST – 3A for PA]. If the service provider is not able to estimate the tax amount properly, he may apply for Provisional Assessment.

Due dates are as follows:

a. 25th October for the half year ending 30th September.
b. 25th April for the half year ending 31ST March.

Revised returns can be filed within 90 days from the date of filing of original return.

Nil return has to be filed even there is no tax liability and no taxable services rendered.

DELAYED FILING

Period of delay	Late fee
Up to 15 days	Rs.500
16 days to 30 days	Rs.1,000
More than 30 days	Rs.1,000 plus Rs.100 per day till the date of filing return [Max Rs.2,000]

RECORDS TO BE MAINTAINED:

The records as maintained by the assessee in accordance with the various laws in force shall be accepted.

Every assessee is required to furnish to the Superintendent of Central Excise a list of accounts maintained by him in relation to service tax. This is to be submitted only once at the time of filing the **first ST- 3 return.**

a. Sales register
b. Purchase register
c. Cash book
d. General ledger.

Such records need to be preserved at least for a period of **five (5) years** immediately after the financial year to which such records pertain.

PENALTIES – SEC. 76, 77 & 78

Sl.no	Nature of Violation	Penalty
1	Failure to pay Service Tax [sec.76]	Not less than Rs.200 per day of default or 2 % p.m. of tax due which ever is higher. In no case penalty exceed the tax amount.
2	Suppression of value	100% or 200% of service tax sought to be charged
3	Failure of Registration	Rs.5,000 or Rs.200 per day which ever is higher from the 1st day after due date till the day of Actual compliance
4	Failure to furnish information called by officer or Central Excise officer	Rs.5,000 or Rs.200 per day which ever is higher from the 1st day after due date till the day of Actual compliance

5	Failure to appear before the Central Excise Officer when issued with summon for appearance to give evidence or document.	Rs.5,000 or Rs.200 per day which ever is higher from the 1st day after due date till the day of Actual compliance
6	Failure to maintain books of accounts	Maximum of Rs.5,000
7	Fails to pay through e-payment	Maximum of Rs.5,000
8	Where no penalty is mentioned	Maximum of Rs.5,000

Service Tax (Determination of Value) Rules, 2006:

IF CONSIDERATION FOR TAXABLE SERVICE IS

1. Fully in terms of money, then gross amount charged by service provider for such service shall be the taxable value.
2. Wholly or partly other than in terms of money, then the value of such service shall be such amount equivalent in money.
3. Consideration is Unascertainable, the amount may be determined in the prescribed manner.

The gross amount charged by the service provider, for the service provided or to be provided shall be inclusive of service tax payable.

Money includes any currency, cheque, promissory note, letter of credit, demand draft, pay order, traveler's cheque, money order, postal remittance and other similar instruments.

Rule 2A: Consideration for Works Contacts

The value of works contract services shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

Value of Works Contract

Includes the following

- Labour charges
- Amount paid to sub-contractors
- Charges for planning and designing
- Cost of consumables, electricity etc.,
- Profit earned

Not includes the following

- Value of transfer of property in goods
- Value of VAT on the above.

Illustration: ABC Ltd manufactures Air Conditioners and also provides the installation services. The value of the air-conditioner supplied to his customer including profit element is Rs.2, 00,000. The installation charge towards labour is Rs.10, 000, and the cost of consumables id Rs.5, 000 and the profit element on installation and consumables is Rs.5,000. What is the value of taxable service?

As per Rule 2 of the valuation rule, the value of service does not include the value of material supplied to the work place. Hence, the value of taxable service can be calculated as follows:

Cost of labour	Rs.10, 000
Cost of Consumables	Rs.5, 000
Profit element	Rs.5, 000
Taxable value of service	Rs.20, 000

Rule 3: Consideration received is not wholly or partly consisting of money

3(a): Valuation shall be on the basis of gross amount charged by service provider for similar services.

3(b): Valuation shall be on the basis of equivalent money value of such consideration, which shall not be less than cost of provision of such services.

Rule 4: Rejection of Value

Where the central Excise officer is not satisfied with the value so determined by the service provider, he shall issue notice to adopt the value determined by the officer and any reasons for not accepting. The officer shall, after providing reasonable opportunity of being heard, determine the value of such taxable service for the purpose of charging service tax in accordance with the provisions of the Act, and these rules.

Rule 5: inclusion in or exclusion from value of certain expenditure or cost

Where any expenditure or cost are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided and shall be included in the value of taxable service.

Exclusions to these are

The expenditure which is incurred as per business practice or convenience does not form part of service provided by service provider to service receiver.

Expenditure incurred by service provider as "**pure agent**" of service receiver is not includible.

Rule 6: The commission, costs, etc., will be included or excluded

The value of taxable service shall include

2. The commission or brokerage charged by a stock broker on sale or purchase of securities.
3. The amount of premium charged bt the insurer from the policy holder.
4. The commission received by the air travel agent from the airline
5. The commission or any amount received by rail travel agent from the Railways or the customer.
6. The commission, fee or any other sum, by whatever name called , paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent.

The value of taxable service, as the case may be, does not include-

2. Initial deposit made by the subscriber at the time of application for telephone connection or FAX etc.,
3. The airfare collected by air travel agent in respect of service provided by him.
4. The rail fare collected by rail travel agent in respect of services provided by him; and interest on loans,