

PRACTICE QUESTIONS ON SERVICE TAX

1. Write short notes on – (a) Person, (b) Business Entity, (c) Taxable Service, (d) Service Provider, (e) Service Receiver.
 - i. **Person:** Person includes both natural and artificial persons, i.e. Hindu Undivided Family (HUF), Firms, Companies, Corporations, Trusts, Institutions, Societies, Associations (incorporated or otherwise).
 - ii. **Business Entity (w.e.f. 01.07.2010):** Business Entity includes an Association of Persons, Body of Individuals, Company or Firm but does not include an individual.
 - iii. **Taxable Service:** Taxable Service means any service provided or to be provided
 - iv. **Service Provider:**
 - a. **Meaning:** Service Provider is one who provides taxable service as defined u/s 65(105) and is generally liable to pay tax.
 - b. **Exceptions:** In the following cases Service Receiver is liable to pay tax – (i) General Insurance, (ii) Services like Goods Transport Agency, (iii) Insurance Auxiliary Service, (iv) Sponsorship Services, (v) Asset Management Company or Mutual Fund Services etc. (vi) Import of Services
 - c. **Constitution:** In Service Tax Law, the constitution of the Service Provider can be – (i) Any Person, (ii) Commercial Concerns, (iii) Agency, (iv) Establishment, etc.
 - v. **Service Receiver:**
 - a. **Meaning:** Service Receiver is the person who receives or avails the service provided by the Service Provider. In some cases, the Service Receiver is liable to pay tax, and not the Service Provider.
 - b. **Inclusions:** Service Receiver has not been defined under Service Tax law and is referred to as – (i) Any person, (ii) Policyholder, (iii) Subscriber, (iv) Exhibitor, (v) Franchisee, etc.
2. Mr. Bharat is a registered Service Provider. He transfers his business to Mr. Rakesh on 31st July 2010. Explain the requirement to be complied with by Mr. Bharat and Mr. Rakesh on such transfer under the provisions of Service Tax.
 - i. **Bharat's Duty:** Where the assessee transfers his business to another person, he should surrender the Certificate (if he does not provide any other taxable service). In the given case, Mr. Bharat should surrender the Certificate of Registration.
 - ii. **Rakesh's Duty:** Mr. Rakesh, to whom the business is transferred, has to apply for registration. In the given case, the business is transferred on 31st July 2010. Assuming that Mr. Rakesh commences the newly acquired business on the same date, he should apply for registration before 30th August 2010.
3. A particular service has been brought into the Service tax net with effect from 16.05.2010. Mr. Vignesh has provided this service on 20.4.2010, the payment for the same was received on 10.6.2010. Is Service Tax payable on the same?
 - i. **Effective Date** = Date on which a service is made taxable for the first time (OR) date from which a service is included in the taxable service.
 - ii. The Service is **not taxable** even if the bills are raised or payment received after the effective date.
 - iii. **Conclusion:** Therefore, Service Tax is not payable on the service provided by Mr. Vignesh on 20.04.2010.
4. Mr. X, a Software Professional, had entered into an agreement with an Insurance Company to provide services relating to upgradation, adaptation and implementation of Information Technology for furthering the Business of the Company. The agreement was entered into on 1st April 2008 for a monthly payment of Rs. 90,000 p.m. Explain whether Mr. X is liable to pay Service Tax on the transaction with Bank?

i. **Principle:** Information Technology Service is a taxable service with effect from 16th May 2008. Hence Service Tax is leviable on such receipts in respect of period on or after 16th May 2008.

ii. **Analysis:**

- a. In the given case, though the service is provided from 01.04.2008, it shall be taxable only on or after 16.05.2008.
- b. However the Total Value of Taxable Receipts (Rs. 90,000 x 10.5 Months = Rs. 9,45,000) on or after 16.05.2008 does not exceed the Basic Exemption Limit of Rs. 10,00,000 applicable for the period 2008-09.

iii. **Conclusion:** Mr. X is not liable for any Service Tax for the Financial Year 2008-09. However, as the total receipts during the period after 16.05.2008 has exceeded Rs. 9,00,000, the assessee has to register himself under the Act.

Note: Since Goods are not included in value of Taxable Service, CENVAT Credit on the said goods cannot be availed.

5. Ram Ltd manufactures Turbo Engines for manufacturing plants and also provides Installation Services. The value of Turbo Engines supplied to its customer including profit element is Rs. 20,00,000. The installation Charges towards labour is Rs. 1,00,000, the cost of consumables is Rs. 55,000 and the profit element on installation is Rs. 1,50,000. What is the value of Taxable Service?

Note: As per **Rule 2** of the Valuation Rules, the Value of Taxable Service does not include the value of material supplied to the workplace.

In the given case, Value of Taxable Service is calculated as under –

Particulars	Rs.
Cost of Labour	1,00,000
Cost of Consumables	55,000
Profit	1,50,000
Taxable Value of Services	3,05,000

6. Amethyst, Fashion Designers, undertake fashion designing contracts to various events. Services provided to X Ltd is for Rs. 1,00,000. X Ltd is the manufacturer of Cosmetics, Packs of Cosmetics were given to Amethyst as Gift. Find the taxable value of service if –

- a. For similar he charges Rs. 5,00,000
- b. Consideration is not known

Situation	Taxable Value of Service
a. Similar Services Charges are Rs. 5,00,000	Taxable Value of Service = Gross Amount Charged by the service provider to provide similar service to any other person in the ordinary course of trade = Rs. 5,00,000 [Inclusive of Service tax]
b. Consideration is not known	Taxable Value of Service will be based on the cost of reasonable elements in such work plus reasonable profit. Such cost will have to be worked out on the basis of usual costing principles of normal costs and allocation of normal overheads, and including reasonable profit thereon.

7. What are the service specific exclusions in the valuation of Taxable Service?

The value of any Taxable Service does not include the following –

- a. **Initial Deposit** made by the subscriber at the time of application for telephone connection or page or facsimile (Fax) or telegraph or telex or for leased circuit,
- b. **Air Fare** collected by the Air Travel Agent,
- c. **Rail Fare** collected by Rail Travel agent,
- d. Interest on Loans,
- e. Amount collected for **delayed payment** of a Telephone Bill not treated as consideration charged for provision of telecom service and hence not a part of the value of taxable Service.
- f. Taxes levied by any Government on any passenger traveling by air, if shown separately on the ticket, or in the invoice, issued for such ticket.

8. Calculate the net Service Tax Payable under the provision off Rule 2A of the Service Tax (Determination of Value) Rules, 2006 relating to determination of the value of service in the execution of a Works Contract from the following data –

a. Gross Amount for the Works Contract (excluding VAT)	Rs. 1,00,000
b. Value of Goods and Materials sold in the execution of works contract	Rs. 70,000
c. CENVAT Credit on (2) above	Rs. 1,000
d. Service Tax paid on Input Services	Rs. 1,000
e. CENVAT Credit on Capital Goods issued in provision of Works Contract services	Rs. 1,000
f. Service Tax Rate	10.30%

Make suitable assumption and provide explanations where required.

Computation of Value of Taxable Service and Service Tax Payable

Particulars	Rs.
Gross Value charged for Works Contract	1,00,000
Less: Value of Goods and Materials sold	70,000
Value of Taxable Service	30,000
Service Tax due on the above [10.30% x 30,000]	3,090
Less: CENVAT Credit on Input Services	(1,000)
	2,090
Less: CENVAT on Capital Goods issued in provision of Works Contract Service	(1,000)
Net Service Tax Payable	1,090

9. Adlaps Pvt Ltd is engaged in providing advertising services. For the month of August 2010, its Gross Receipts were Rs. 12,50,000. The break up of these receipts is as follows –

Month in which services are performed	Receipts (Rs.)
July	4,30,000
August	2,50,000
September	5,70,000

In the financial year 2009-10, Adlaps Pvt had paid Rs. 15,00,000 as Service Tax. State the amount of Service Tax payable by Adlaps Pvt Ltd for he month of August 2010 and the date by which it is required to make the payment.

1. Computation of Net Service Tax Payable by Adlaps Pvt Ltd for August 2010:

Particulars	Computation	Amount
Gross Amount Charged for the taxable Services	Rs.4,30,00 + Rs.2,50,000 + Rs.5,70,000	Rs. 12,50,000
Service Tax payable at 10.30%	Rs. 12,50,000 x 10.30%	Rs. 1,54,000

Note: Sec.67(3) of the Finance Act, 1994 stipulates that the Gross Amount charged for the Taxable Service shall include any amount received towards the taxable service received before, during or after provision of such service.

- 2. Due date for payment of Service Tax:** Since the Service Tax liability for the previous year exceeds Rs. 10,00,000, e-payment is mandatory in the current financial year. Therefore, Service tax ha to be paid on or before 6th September 2010.

10. For certain taxable services rendered by P, VAT as well as Service Tax is leviable. The following bill was raised by P on V (Service Received) on 20.03.2011:

Amount of Bill	Rs. 40,000
VAT	400
Total	40,400

On 31.3.2011, P receives Rs. 30,000 in full settlement. What is the Service Tax payable? You are informed that V has incurred hotel bills of Rs. 3,708 on behalf of P. Indicate the provisions considered in arriving at the Service Tax payable.

- Value of Taxable Service is Rs. 30,000 **plus** consideration received in kind as per the Valuation Rules
- Service Tax Payable = [(Rs. 30,000 + Rs. 3,708) = Rs. 33,708 x 10.30 / 110.30] = **Rs. 3.148**

11. X & Co received the following amounts:

Date of receipt	Nature of receipt	Amount	Time of providing service
20.4.2010	For Service	Rs. 1,00,000	Service rendered in July, 2010
30.6.2010	Advance for service	Rs. 5,00,000	Service were rendered in July and August 2010
5.8.2010	For service	Rs. 50,000	For services rendered in March, 2010
10.9.2010	Advance for service	Rs. 3,50,000	A sum of Rs. 50,000 was refunded in April, 2011 after termination of agreement. For the balance amount, service was provided in September 2010

Compute – (i) The amount of taxable services for the first two quarters of the Financial Year 2010-11.
(ii) The amount of Service tax payable.

1. Computation of Value of Taxable Services

Particulars	Rs.
Service rendered in July, 2010. Advance payment received on 20.04.2010	1,00,000
Add: Service rendered in July and August, 2010. Advance payment received on 30.06.2010	5,00,000
Value of Taxable Services for the quarter ending June 2010	6,00,000
Service rendered in March, 2010. Advance payment received on 05.08.2010	50,000
Add: Advance payment of Rs. 3,50,000 received on 10.09.2010. Service is rendered in September, 2010 for Rs. 3,00,000. Balance of Rs. 50,000 is refunded in April, 2011. Service tax is payable on receipt basis. Therefore, Service tax is payable on entire Rs. 3,50,000. If Rs. 50,000 is refunded along with service tax, the same shall be adjusted Against the Service tax payable for quarter ending June 2011.	3,50,000
Value of taxable Services for the quarter ending September 2010	4,00,000

2. Computation of Service Tax Payable

Particulars	Quarter ending	
	June 2010	September 2010
Service Tax (Rs. 6,00,000 x 10%) & (Rs. 4,00,000 x 10%)	60,000	40,000
Add: Education Cess (Rs. 60,000 x 2%) & (Rs. 40,000 x 2%)	12,00	800
Add: Secondary and Higher Education Cess (Rs. 60,000 x 1%) & (Rs. 40,000 x 1%)	600	400
Total Service Tax Payable	61,800	41,200

12. What are the conditions incidental to payment of Service Tax?

Is the Service tax payable by the assessee, even in cases where his clients do not pay for the service rendered or pay only a part of the bill raised in this regard?

Prahlaad has paid the amount of Service tax for the quarter ending 30th June 2010 by cheque. The date of presentation of cheque to the designation bank is 5th July 2010 and it is realised by the bank on 7th July 2010. What is the date of payment of Service Tax in this case? Whether any interest and penalty is attracted in this case?

i. Payable on Receipt Basis:

a. Actual Amount Received: Service Tax is payable on the value of Taxable Service actually received. Service Tax is not payable on amounts charged, but only on amounts actually received.

b. TDS part of Taxable Value: Service Tax is to be paid on the value Taxable Service, which is charged by a Service Tax assessee. Income Tax deducted at source is included in the charged amount. Service Tax is, therefore, payable on the total amount **inclusive** of the Income Tax deducted at source.

ii. Payable even if ST is not collected: Failure to realize or failure to change the Service Tax at the prevailing rate does not absolve the liability of the Service Provider to pay Service Tax. Liability of the Service Provider to pay Service Tax **subsists**, even if it is not collected by him from his client

iii. Due Date:

Person	Due Date for payment
a. Individuals / Proprietary Firm / Partnership Firm	General: 5th of the month following the quarter of collection, i.e. on or before 5th of July, 5th of October and 5th of January. Quarter ending in March: Tax should be paid on or before 31st March itself.
b. Other Persons	General: 5th of month following the month of collection. March: Tax should be paid on or before 31st March itself.

Note: For E-payment of Tax: Due date shall be 6th instead of 5th.

Where the last day is a Public Holiday, payment can be made on the next working day.

iv. Form / Challan for Payment:

a. Service Tax shall be paid in **Form GAR-7 Challan** into the **Designated Bank Branches**.
[Note: Payment of Service Tax into Non-Designated Banks does not amount to payment of Service Tax.]

b. A Multiple Service Provider can either use single GAR 7 Challan for making payment in respect of all services, or separate challans for each services.

v. **Rounding Off [Sec.37D of Central Excise Act]:** Amount of Service Tax shall be rounded off to the nearest rupee.

vi. **Payment in Cash:** Where the amount of Service Tax is paid in cash, the date of payment is the date on which cash is tendered to the Designated Bank.

vii. Payment in Cheque:

a. **Date of Deposit = Date of Remittance:** Where payment is made in Cheque -

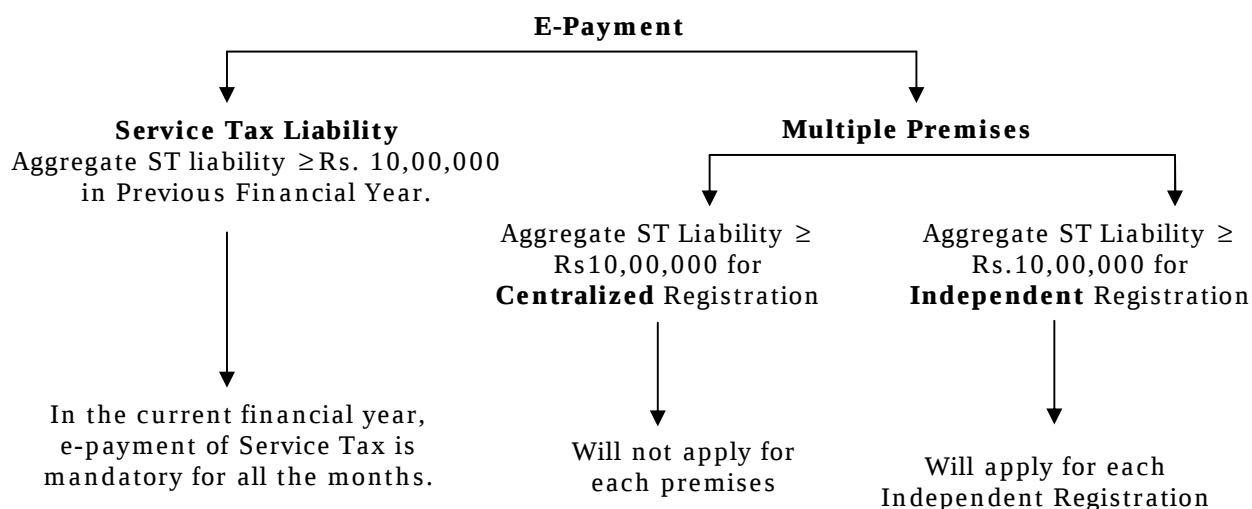
- It should be deposited with the bank on or before the due date, and
- If it is realized in the normal course of banking even after the due date, payment will be deemed to have been made before due date.

b. **Dishonor of Cheque:** If the cheque is dishonored, Service Tax will not be deemed to have been paid.

Case of Prahlada: In case of payment by cheque, cheque should be deposited on or before the due date. Thus, in this case, the date of payment will be 5th July 2010, as the cheque has been realized on 7th July 2010. Since, the Service Tax has been paid on the due date, no interest and penalty is chargeable as there is no delay in payment of Service Tax.

13. Write short notes on E-Payment of Service Tax.

What is the due date for payment in case of e-payment of Service Tax?



i. **Nature:** Mandatory

ii. **Name:** The system is called “Electronic Accounting System in Central Excise and Service Tax” (EASIEST)

iii. Applicability: Assessee who have paid a Service Tax of Rs. 10 Lakhs or more during the preceding financial year.

iv. Due Date:

Individuals/ Proprietary Firm / Partnership Firm	6 th of the month following the quarter of collection. In case of quarter ending in march, tax should be paid on or before 31 st March itself.
Other Persons	6 th of the month following the month of collection. In case of month ending in March, tax should be paid on or before 31 st March itself.

v. Qualifying Amount:

- Many Registered Premises:** Rs. 10 Lakhs would apply to each of the premises individually if each such premise is separately registered for payment of Service Tax.
- Service Recipient Paying Service Tax:** The limit of Rs. 10 Lakhs includes Service Tax paid under Rule 2 (1) (d), i.e. tax borne by the service recipients on Taxable Services received by him
- Large taxpayer units:** cumulative service tax paid by all registered premises of such large taxpayer will be taken into account for criterion of payment of service tax amount of RS. 10 Lakhs.
- Amount paid by CENVAT:** Rs. 10 lakhs limit includes total of Service Tax paid, i.e. by cash and by way of CENVAT Credit.
- Penalty:** Up to Rs. 5,000.

14. Write Short notes on E-Filing of Return

- Meaning:** E-Filing is a facility for the electronic filing of Service Tax returns by the assessee through the Internet, by using a computer
- Nature:** E-Filing of Service Tax returns is mandatory for an assessee who has paid a total service tax of RS. 10 Lakhs During the preceding financial year.
- Procedure / Conditions:**
 - Application:** Assessee should apply one month in advance before the due date of filing return in Annexure I.
 - Login Mode:** He will be given 15 digits service tax payer code. User ID, Passwords and technical details will be supplied to him within 10 days of filing the application.
 - Return Form:** Assessee will download form for entering details of ST-3 and GAR-7 challans from central server.
 - Data Entry:** Assessee will enter necessary details.
 - Acknowledgement:** After return is filed, the computer will generate a Key Number and will generate acknowledgement. Assessee can take print out and keep it for his record.

15. CAs plays a significant role in the matters involving Service Tax – Explain.

- Compliance:** The Various procedures relating to Registration, payment of Tax, returns and Assessments are to be complied with, and hence a Chartered Accountant with his expertise can facilitate such compliance.
- Representations:** CAs can represent their Clients before the various Service Tax assessment Authorities, Commissioner (Appeals) and Tribunals.
- Continuous Updation:** There is an increasing requirement for professionals to update themselves with the latest developments because Service Tax provisions are governed mainly by way of Notifications issued by various Commissionerates.
- Advisory Services:** Various provisions of Service Tax requires an in depth interpretation and analysis, and hence there is a demand for professional advice among Service Providers.
- Wider Scope:** With rapid growth of Service Sector, the scope and potential for practice is also expanding.

16. Private Tuition Centers are within the scope of levy of service Tax. Explain. Commercial Training or Coaching is an activity within the service Tax ambit Discuss. Explain term “Vocational Training Institute” under the provisions of Service Tax.

Effective date	This service is taxable. w.e.f. 01.07.2003
Meaning	1. Commercial Training or Coaching Centre shall include [Sec.65(26) / 65(27)]- - Any Centre or Institute, - Where training or coaching is imparted for consideration, - Whether or not such centre or institute is registered as a Trust or Society or similar other organization under any law for the time being in force, and - Carrying on its activity with or without profit motive.
Taxable Services	- Institutions providing Commercial coaching or Training, Coaching Classes, Tutorial Classes, postal coaching, Home Tutions by Institutions. - Commercial Coaching centers for imparting training to Client's Staff at Client's premises. - Computer training institutes (both Hardware and Software). General Course: Institutes that offer general course on improving communication skills, personality development, how to be effective in group discussions or personal interview, general grooming and finishing etc are liable to service Tax. These institutes do not prepare a candidate to take up employment or self-employment directly but only improve the chances of success or a candidate who already has the required skill. [Hence, not covered under vocational Training Institutes]. Derecognition : An Institution or establishment which is derecognized by the professional councils (og. Medical Council of India MCI, Bar council of India BCI, all India council for Technical Education (AICTE). An Institute / establishment may be recognized by the law at one time and services and not Training / Coaching provided by a commercial Training or Coaching centre. - Training / coaching provided by a commercial Training or coaching Centre. - Services rendered by a computer training institute - Institutions imparting education/ training / coaching skills, helping in preparing for competitive exams or conducting classes for various subjects. - Coaching by postal means is taxable, including the postal charges. - If employer hires an outside commercial coaching or training centre for imparting some training to its Employees, then the payment made by the said Employer to such coaching centre chargeable to tax.
Non – Taxable Services	- Pre-school coaching and training centre - Sports Training Institutions - Individual providing Tutions at own home Vocational Training Institute-Commercial training or coaching centre which provides Vocational coaching or training that impart skills to enable the trainee to seek employment or undertake self employment, directly after such training or coaching . - Commercial training or coaching services provided by a vocational Training provider. Condition: He should be registered under the “Skill Development. Initiative Scheme” with the Directorate General of Employment and Training, in relation to Modular Employable skill courses approved by the National Council of Vocational Training . Recreational Training Institutes - Commercial training or coaching centre which provides coaching or training relating to recreational activities such as dance, singing, martial arts, hobbies, foreign languages, painting Hobby classes etc. - Institutions issuing any Certificate / Diplome or degree, etc. recognized by any law in force. E.g. university / Deemed university as defined under the UGC Act, Autonomous colleges as per National policy on Education, 1986. - Commercial Training, which form an essential part of course of curriculum of any other institute or establishment , leading to issuance of certificate or diploma or degree or educational qualification recognized by law for the time being in force, to any person. - Employers providing free training themselves. - Individuals providing services at the premises of a Service Receiver are not subject to Service Tax However, if coaching or Training centre provides commercial coaching by sending individuals to the premises of service Receivers, such services would be chargeable to tax.

11. Vocational Coaching and training services provided by typing and shorthand institutes, TV/ Vehicle repair training institutes, tailoring institutes, foreign language institutes, computer training centers, hobby classes, institutes teaching martial arts, painting, dancing, etc.

- 17.** Padhuka Associates is a commercial training centre. It was established in 2005 and since then gross annual receipt is more than Rs.400000 every year. It charges Rs.1,50,000 per student per batch for providing training, the break up of the bills is as follows-

Training charges Rs. 1,20,000
Value of books sold Rs. 30,000

Compute the amount of service tax to be charged.

Computation of Service tax liability

Particulars	Amount
Training charges	1,20,000
Less: Value of books sold – (exempt under Notification No. 12/2003 – ST)	Nil
Total value of taxable service	1,20,000
Service tax at 10.30%	12,360

- 18.** Virat Kohil & Co., a partnership firm., is providing taxable legal consultancy services, for the second consecutive assessment year. The firm furnishes the following information relating to the services rendered, bills raised, amounts received relating to this service, for the year ended 31.3.2011:

Particulars	Rs.
Free service rendered to poor people (Value of the services computed on comparative basis)	40,000
Advances received from clients for which to taxable service has been rendered so far	5,00,000
Services billed to clients Gross amount (Service tax has been charged separately in all the bills; the firm follows mercantile system of accounting)	12,00,000
The firm has received the following amounts during the year: Relating to taxable services rendered in March, 2009 (excluding service tax at applicable rates and TDS under section 194-J of the IT Act, 1961 to the tune of Rs.45,320)	5,44,680
Relating to taxable services rendered in current year 2010 (excluding service tax at applicable rates and TDS under section 194-J of the IT Act, 1961 to the tune of Rs.1,20,000) (* Includes Rs.50,000 for appearance fee before Labour Court received from another firm)	9,80,000

Service tax has been separately received for applicable items in (iv) above.

You are required to compute the value of taxable services for the year ended 31.3.2011 and the Service tax payable, briefly explaining the treatment of each item above.

Assessee: Virat Kohil & Co.

Financial Year : 2010-2011

Computation of Value of Taxable Services and Service Tax Payable for the year ended 31.03.2011.

Question	Taxable Value	Reasons
i. Free services rendered to poor people (Value of the services computed on comparative basis)	Nil	When no consideration is received (either in monetary or non monetary form) for provision of a taxable service, then there is
ii. Advances received from clients for which no taxable service has been rendered so far (Rs.5,00,000 × 100 / 110.3)	4,53,309	Advanced received is taxable even through to taxable service has been rendered so far, since consideration may be received before, during or after the rendering of the services.
iii. Services billed to clients Gross amount (Service tax has been charged separately in all the bills; the firm follows mercantile system of accounting)	Nil	Though the service provider charges service tax in this bill raised on his Client as and when the service is provided, the Service tax is payable to the Government only when the payment is 'received' .
iv. The firm has received following amounts		

Relating to taxable services rendered in March, 2009 (excluding service tax at applicable rates and TDS under section 194-J of the IT Act, 1961 to the tune of Rs.45,30) – 5,44,680	NIL	Since the service of legal consultancy becomes taxable w.e.f. 01.09.2009, the services rendered during March 2009 shall not be liable for tax.
Relating to taxable services rendered in current year 2009 (excluding service tax at applicable rates and TDS under section 194-J of the IT Act, 1961 to the tune of Rs.1,20,000)-9,80,000	10,50,000	- Such services are assumed to be rendered after 01.09.2009. - Free received for appearance before labour courts exempt from tax.
(Includes Rs.50,000 for appearance fee before Labour Court received from another firm)		- Assumed that the TDS is deducted only on the value of taxable services and not on the service tax portion or the exempt portion. Computation = 9,80,000 (Total Value) + 1,20,000 (TDS)-50,000 (Exempt) - Since service tax is separately charged, service tax is calculated directly and grossing up is not made.
Taxable value of services	15,03,309	
Service tax payable @ 10%	1,50,331	
Add: Education Cess @ 2% of Service Tax	3,007	
Add: SH & EC @ 1% of Service tax	1,503	
Total Service tax payable	1,54,841	

19. G.S. Associates, a firm of advocates provide legal consultancy service. On 1st April 2009, It receives a sum of Rs.20,40,000 (i.e.,Rs.1,70,000 per month for 12 months) In advance for providing legal consultancy services to an overseas company which operates from India. On April 1, 2009, legal consultancy service is not chargeable to tax. Legal consultancy service is taxable only with effect from September 1, 2009. Since at the time of getting consultancy fees in advance on April 1, 2009, legal consultancy service is not chargeable to tax, G S Associates do not want to pay tax on the aforesaid receipt. Is it legally tenable? If not determine the amount of service tax which will be collected by G S Associates in addition to the amount given above.

If the payment towards service is received in advance prior to imposition of service tax on that service, then service tax shall be payable on the services provided on or after the imposition of service tax. Therefore, the legal consultancy services provided by G S Associates will be as follows:

Particulars	Amount
Service provided from April 2009 to August 31, 2009-Not taxable	Nil
Service provided from September 1, 2009 to March 31, 2010 (Rs.1,70,000 × 7)	11,90,000
Total	11,90,000
Service Tax at 10.30%	1,22,570

20. XYZ Co. was Involved in the services of unloading of coal from wagon tipping system, stacking / reclaiming of coal to stacker reclaimer system and feeding of coal to boiler bunkers through conveyer system. The Department had taken a view that the charges received by XYZ Co. for such activity were taxable under the category of Cargo Handling Services in terms of Section 65 (105) (zr) read with Section 65(23) of the Finance Act, 1994.

M/s XYZ Co. claimed that the services rendered by it cannot be brought under Cargo Handling Service as it is engaged only in the handling of coal from Railway Wagons to the required destination of the Thermal Power Station wherein machines are used with the aid of some manpower.

Briefly explain with reference to relevant provisions and case law, if any, whether the state taken is correct in law.

i. Cargo handling service:

- Coal is handled / moved from railway wagons to the site of thermal power station with the aid of wagon tipping system to be fed in boiler bunkers through conveyor system.

- b. No motor vehicle or any means of transportation was involved in handling of cargo. The said service does not fall under the ambit of cargo handling services

ii. Conclusion: Hence, the given activity does not fall within the ambit or Cargo Handling Services.

21. Legal Consultancy Services : State whether service tax is applicable in the following cases:

- i. Mr. Ramesh, an advocate, providing consultancy services to Omega Ltd. In relation to company law matters.
- ii. Mehta & Sons, a law firm, providing legal assistance to Omega Ltd. In relation to civil cases filed against the company.
- iii. Mehta and sons providing advisory services to Mr. Kamlesh in respect of his property matters.
- iv. Mehta and sons providing service of appearance before Sessions Court to Omega Ltd. In relation to criminal cases filed against the company.

With effect from 01.09.2009, legal consultancy services have been brought under the service tax levy vide the Finance (No. 2) Act, 2009. Section 65(105)(zzzzm) provides that scope of legal consultancy service shall include any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law. However, any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

Here, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual.

Thus, legal consultancy services shall not be liable to service tax in following cases:-

- a. Where such service is provided by way of appearance before any court, tribunal or authority;
- b. Where the service provider and/or service recipient is an individual.

The questions are now answered as follows:

- i. Mr. Ramesh, being an individual service provider is not a business entity in terms of section 65(105)(zzzzm). Hence, Mr. Ramesh will not be liable to service tax.
- ii. Here, both service provider and service receiver are business entities in terms of section 65(105)(zzzzm). Thus, service tax will be applicable in this case.
- iii. In this case, Mr. Kamlesh, the service receiver is a individual and thus not a business entity in terms of section 65(105)(zzzzm). Thus, service tax will not be applicable in this case.
- iv. Here, though both the service provider and the service receiver are business entities, but the service being rendered is that of appearance before any court, tribunal or authority; which is excluded from the scope of taxable service. Hence, service tax will not be applicable in this case.

22. Commercial Training or Coaching Services: With reference to commercial training or coaching services, state whether tax is applicable in the following cases;

- i. Pinnacle Institute offering courses on personality development and grooming.
- ii. BTL Engineering College offering B. Tech students. However, the college has been derecognized by the All India Council for Technical Education.

Section 65(105)(zzc) provides that the scope of taxable service shall include any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching.

As per section 65(27), a commercial training or coaching centre means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force.

The questions are now answered as follows:

- a. Notification No. 24/2004 ST dated 10.09.2004 inter alia exempts taxable services, provided in relation to commercial training or coaching by a vocational training institute to any person from the whole of the service tax leviable thereon. Here, vocational training institute means a commercial training or coaching centre which provides vocational coaching or training that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching.

However, Circular No. 107/01/2009 ST dated 28.01.2009 has clarified that institutes offering general course on improving communication skills, how to be effective in group discussions or personal interviews, personality development, general grooming and finishing etc. are not covered under the definition of vocational training institute because they only improve the chances of success for a candidate possessing required skill and do not impart training to enable the trainee to seek employment or self-employment.

Thus, Pinnacle Institute is not entitled to exemption under the above notification and is liable to service tax.

- b. A B.Tech degree is recognised by law and thus institutes offering such degrees are excluded from the scope of the said taxable service. However, Circular No. 107/01/2009 ST dated 28.01.2009 has clarified that an institution or establishment which is derecognized by the professional councils (such as All India Council for Technical Education-AICTE, Medical Council of India-MCI, Indian Council for Agricultural Research-ICAR, Bar Council of India-BCI) created through independent Union Acts does not fall under the category of institutes/establishments which issue diploma or certificate recognized by the law for the time being in force and hence is taxable under the category of commercial coaching and training services.

Thus, BTL Engineering College being derecognized by All India Council for Technical Education shall be liable to service tax.

- 23. Commercial Training or Coaching Services:** JB Institute of Management is engaged in providing vocational training to the students. The services provided are taxable under the category of "commercial training or coaching services" Explain the validity of the statement.

The statement is invalid. Notification No. 24/2004 dated 10.09.2004 provides that the taxable services provided to any person in relation to commercial training or coaching, by a vocational training institute are wholly exempt from the service tax. Therefore, in the given case, services provided by JB Institute of Management are not taxable under the category of "commercial training or coaching services".

- 24. Information Technology Services:** Aarush, a software consultant, has developed a software for Beta Ltd. Has raised a bill of Rs.250000 on Beta Ltd. On 02.03.2011. A sum of Rs.150000 was received from Beta Ltd. On 15.03.2011 and the balance on 23.06.2011. The questions are:

- a. Is service provided by Aarush liable to service tax? If yes, then whether Aarush will be liable to pay service tax, even though the same has not been charged by him?
 - b. In case Aarush is liable to service tax, what is the value of taxable service and the service tax payable by him for the financial year 2010-2011?
- a. Yes. As per clause (i) of section 65(105)(zzzz), development of software is liable to service tax under information technology software services.

Yes, Aarush will be liable to pay service tax. Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per Rule 2(1)(d). This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. Hence, Aarush will be liable to pay service tax.

- b. When the assessee has not charged service tax because of the nature of service or has failed to recover the service tax from the client / customer as he is not aware that his services are taxable, the amount recovered from the client in lieu of having rendered the service is taken to be inclusive of service tax. Accordingly service tax payable is calculated by making back calculations.

Since, service tax is payable on receipt basis, in the F.Y. 2008-09, only Rs.1,50,000 will be liable to service tax.

The rate of service tax payable:

Basic rate	10%
Education cess of 2% and Secondary and higher education cess of 1% (3% of 10%)	10.30%

$$\text{Value of taxable service} = \frac{\text{Gross amount charged}}{(100 + \text{Effective rate})} \times 100$$

$$= \frac{1,50,000 \times 100}{110.30}$$

$$= \text{Rs.1,35,993 (approx.)}$$

$$\text{Service tax payable} = \frac{1,50,000 \times 10.3}{110.30}$$

$$= \text{Rs.14,007}$$

SELF TEST QUESTIONS ON SERVICE TAX

1. Service tax extends to the
 - a) Whole of India
 - b) Whole of India except J & K
 - c) Whole of India including j & K
2. Levy of Service tax is on
 - a) Receipt basis
 - b) Rendering basis
 - c) Rendering & receipt
3. In case of Service tax, reliance is on collection through
 - a) Voluntary compliance
 - b) Service receiver
 - c) Service provider
4. The act for levy of service tax is
 - a) Service tax act, 1994
 - b) Finance Act, 1994
 - c) Circulars & Notifications
5. In Indian, the approach to service tax is
 - a) Comprehensive coverage
 - b) Selective coverage
 - c) Partly selective & Comprehensive
6. Services rendered to an Export Oriented Unit
 - a) Taxable
 - b) Not Taxable
 - c) Based on the service
7. The certificate of Registration is in Form
 - a) ST 1
 - b) ST 2
 - c) ST 3
8. If Certificate of Registration is not received within ____ days, it is deemed registration.
 - a) 15
 - b) 7
 - c) 30
9. Under service tax law, all records should be preserved for
 - a) Atleast 5 years
 - b) 5 year
 - c) More than 5 years
10. When service is provided on 4th August and advance payment received on 29th July 2010, cut off date for issue of Invoice is__
 - a) 11th August
 - b) 12th August
 - c) 18th August
11. In case of public authorities performing statutory functions,
 - a) Services provided by them are exempt
 - b) Services provided to hem are exempt
 - c) Services provided for them are exempt
12. Gross amount charged includes payment by
 - a) Cheque
 - b) Credit card
 - c) Both of the above
13. Services provided during warranty period is
 - a) Exempt
 - b) Not taxable
 - c) Taxable
14. When the due date for payment of service tax is a public holiday, payment can be made on
 - a) Next working day
 - b) Preceding working day
 - c) Within 3 days of grace from the due date
15. The amount of service tax shall be rounded off to nearest
 - a) one
 - b) Ten
 - c) Hundred

- 16.** If Services are not provided during a period, service tax return.
 a) NIL return should be filled
 b) Need not be filed
 c) NIL return need not be filed
- 17.** The threshold limit for exemption under service tax is Rs.
 a) 9 lakhs b) 10 lakhs c) 8 lakhs
- 18.** Income tax deducted at source is on the
 a) Value of service
 b) Value of service – Service tax amount
 c) Value of Service + Service tax amount
- 19.** Services provided by Central or state government are taxable unless;
 a) These are Statutory Services
 b) Consideration is received
 c) Consideration is received in non-monetary form
- 20.** i-store files the return for the period ending 31st March 2010 on 20th April 2010. What is the time limit for revision of the return filed?
 a) 19th July 10
 b) Revision not possible
 c) 24th July 10
- 21.** The interest payment of service tax is _
 a) 12% p.a. b) 13% p.a.
 c) 13% per month
- 22.** Mr. Xylam, is registered for the following services CHA, C & F Agent, Business Auxiliary Services, Cargo Handling Services from The various premises at T.Nagar, Trichy, Tambaram & Tuticorin, respectively. The main branch at T.Nagar accounts for all the transactions. What is the nature of registration & to whom should be apply?
 a) Centralised Registration
 b) Independent Registration
 c) Multiple Registration
- 23.** Service is rendered on 10th September 2009, Advance is received on 18th August 2009. Whereas the service was brought into the taxable net from 1st September 2009. Determine the taxability.
 a) Taxable b) Not taxable c) Exempted
- 24.** In case of NIL service tax during a specified period, penalty for delayed filling of service tax returns
 a) Cannot be waived
 b) Can be waived by CEO
 c) Waiver is not applicable
- 25.** Service tax provisions are applicable to
 a) Exclusive economic Zone
 b) Export Oriented Unit
 c) Whole of India.

1.	B	2.	A	3.	A	4.	B	5.	B
6.	B	7.	A	8.	B	9.	B	10.	A
11.	A	12.	A	13.	C	14.	C	15.	A
16.	A	17.	A	18.	B	19.	C	20.	A
21.	A	22.	B	23.	A	24.	B	25.	A