



Compliances under Service Tax

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Service tax has spread its wings deeply and widely and its scope is being widened every year by adding more services within its ambit. It entails numerous compliances and procedures. These have been briefly spelt out herein along with salient features of service tax law.

INTRODUCTION

The share of services in real GDP is the highest among industry, services and agriculture even higher than the total of other two. In India, services contribute over 55 per cent of Gross Domestic Product (GDP). Since 1980, growth of service sector in India has outpaced aggregate GDP growth. During 2006-07, the GDP grew @ 9.2% only whereas service sector registered a growth of 11.2%.

Service tax had been imposed as an indirect tax which is demanded from one person on the expectation and intention that such person shall indemnify at the expense of other person who is consuming such service. The tax is levied on services and not on income or profits, thus carrying the tax to the point of consumption.

Service tax gains its authority from Item No. 97 in the Union List of Seventh Schedule to the Constitution of India. Sections 64 to 96-I of the Finance Act, 1994, as amended from time to time provide the legal basis for the levy and collection of service tax. Although there was no entry in the Union List or State List which authorise levy of service tax, the Central Government can impose such taxes through its powers under residuary entry in the Union List. However, there has been a Constitutional amendment to this effect in 2003.

Service tax had been levied initially at the rate of five per cent flat since 15th July, 1994 till 13th May, 2003, at the rate of eight per cent flat w.e.f. 14th May, 2003 to 9th September, 2004 and at the rate of 10% flat plus an education cess of 2% thereon w.e.f. 10th September, 2004 on value of all taxable services provided by service providers. The rate of service tax was enhanced to 12% by Finance Act, 2006 w.e.f. 18.4.2006. Finance Act, 2007 has imposed a new secondary and higher secondary cess of one per cent on the service tax w.e.f. 11.5.2007, increasing the total education cess to three per cent and a total levy of 12.36 per cent.

The Finance Act, 2007 has imposed service tax on seven new services besides making certain legislative amendments. These include filing of belated returns, revision of returns, enhancement of exemption scheme limit meant for small services provided from Rs. 4 lakhs to Rs. 8 lakhs etc. The new taxable services include mining, asset management, designing, content development and supply, execution of works contract, telecommunication and renting to immovable properties on which service tax shall be levied w.e.f. 1st June, 2007 vide Notification No. 23/2007-S.T. dated 22.5.2007. The Optional Composition Scheme for Works Contracts has also been notified vide Notification No. 32/2007-S.T. dated 22.5.2007.

APPLICABILITY OF SERVICE TAX

The provisions relating to service tax were brought into force with effect from 1st July, 1994 vide Notification No. 1/94 dated 28-6-1994 published in Gazette of India. It extends to whole of India except the state of Jammu & Kashmir and applies to taxable services provided on or after 1st July, 1994. While the Central Excise Act, 1944 applies to whole of India including Jammu and Kashmir, provisions relating to Service Tax exclude the State of Jammu and Kashmir. Thus, services provided in the jurisdiction of the State of Jammu and Kashmir are not covered for the purpose of service tax, irrespective of the service provider being from the Jammu and Kashmir State or otherwise.

Service tax is not applicable on export of services outside India and services also provided to special economic zones or units in SEZs but is applicable to Indian territorial waters, continental shelf and exclusive economic zones. These are however, subject to Export of Services Rules, 2005. On the other hand, Service tax is applicable on services provided from outside India and received in India (Import of Services) under Taxation of Services (provided from outside India and received in India) Rules, 2006.

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**IMPORTANT LANDMARKS IN SERVICE TAX**

Following are the important landmarks and happenings in service tax in last 12 years –

Date	Event/Happening
01.07.1994	Introduction of service tax in India @5 percent by Finance Act, 1994
28.01.1998	Creation of a post of Director General of Service Tax (DGST)
01.01.2002	Introduction of PAN based service tax code numbers for assesseees
16.08.2002	Credit of service tax on input services allowed for the first time
01.04.2003	e-filing of service tax returns allowed
14.05.2003	Rate of service tax enhanced to 8 percent
01.07.2003	Gross amount to exclude value of goods or materials sold while rendering service
01.07.2003	Eight digit accounting codes prescribed for taxable services
10.09.2004	Rate of service tax revised from 8 percent to 10 percent
10.09.2004	Imposition of education cess @2 percent on service tax
10.09.2004	– CENVAT Credit Rules, 2004 come into force – Concept of input service distribution introduced
01.01.2005	Service tax on goods transport agency services levied
15.03.2005	– Exemption to convertible foreign exchange withdrawn – Export of Services Rules, 2005 notified
01.04.2005	Exemption scheme for small service providers
01.04.2005	– Due dates for payment of service rescheduled from 25th to 5th day and payment of service tax for March quarter/month to be made in March itself – Invoices to be issued within 14 days of completion of service or receipt of payment whichever is earlier
13.05.2005	Service tax levied payable on amounts received before, during or after rendering of service
16.06.2005	Service tax levied on deemed import of services
16.06.2005	Service Tax (Registration of Special Category of Persons) Rules 2005 notified
20.10.2005	New Forms ST-1, ST-2 and ST-3 introduced
01.03.2006	Exemption to CAs, CSs and CWAs withdrawn
18-4-2006	Rate of service tax enhanced to 12 per cent
18-4-2006	Provisions for attachment of property and stringent measures for recovery of service tax introduced
19-4-2006	New valuation norms, i.e., Service Tax (Determination of Value) Rules, 2006 notified
19-4-2006	New rules for taxability of services received in India provided from outside India notified (deemed import of services)

01-10-2006	Scheme for Large Tax Payers (LTUs) launched
01-04-2007	Mandatory e-payment of service tax by specified assesseees
11-5-2007	Levy of one per cent secondary and higher education cess

SCHEME OF SERVICE TAX

The Finance Act, 1994 (Chapters V and VA) provides for imposition of Service Tax *vide* Sections 64 to 96-I.

The scope of each Section is as follows:

- Section 64 gives extent, commencement and application.
- Section 65 defines the different terms used in the Act.
- Section 65A provides classification of taxable services.
- Section 66 empowers the Government to levy and collect Service Tax on taxable services.
- Section 66A provides for charge of service tax on services received from outside India.
- Section 67 explains valuation of different services for taxation.
- Section 68 specifies persons liable to pay the tax on services rendered.
- Section 69 requires every person liable to pay the tax to apply for registration and obtain registration certificate.
- Section 70 requires persons liable to pay Service Tax to file periodical returns.
- Sections 71 and 72 related to assessment and best judgment assessment (omitted by Finance Act, 2004).
- Section 71A provides for filing of returns by certain customers.
- Section 73 prescribes the procedure for recovery of service tax.
- Section 73A provides for voluntary payment of service tax or amount collected in excess but not deposited with the Central Government.
- Section 73B provides for collecting interest on the amount under Section 73A at rates ranging between 10% and 24 %, as may be prescribed.
- Section 73C provides for provisional attachment of any property on whom notice is served under section 73(1) or 73A(3) during pendency of proceedings.
- Section 73D provides for publishing the name of any person in any proceedings under Chapter V in public interest.
- Section 74 relates to rectification of assessment orders.
- Section 75 empowers payment of interest @ 10-36 per cent per annum on delayed payment of service tax, to be levied by Government (presently 13 per cent).
- Section 75A prescribed penalty for failure of registration (omitted by Finance Act, 2004).
- Section 76 prescribes penalty for failure to pay Service Tax.



- Section 77 relates to penalty for failure to comply with provisions of service tax.
- Section 78 relates to penalty for suppressing value of taxable service or non payment of service tax or erroneous refund.
- Section 79 prescribed penalty for failure to comply with notice (omitted by Finance Act, 2004).
- Section 80 provides for waiver of penalty where an assessee shows reasonable cause for failure under Section 76, 77 or 78.
- Section 81 prescribes procedure for dealing with offences by companies (omitted by Finance Act, 2004).
- Section 82 empowers Assistant/Deputy Commissioners to search premises and to seize.
- Section 83 makes provisions of Sections 9C, 9D, 11, 11B, 11BB, 12A, 12B, 12C, 12D, 12E, 14, 14AA, 15, 33A, 35F to 35O (both inclusive), 38Q, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40 applicable to Service Tax.
- Section 83A prescribes power of adjudication of penalties.
- Section 84 empowers the Commissioner of CE to review orders passed by his subordinates within two years.
- Section 85 provides that appeals can be filed before the Commissioner of Central Excise (Appeals) against orders passed by the Assistant/Deputy Commissioners.
- Section 86 provides for appeals to Appellate/Tribunal against orders of the Commissioner of CE under Section 84 or the Commissioner of CE (Appeals) under Section 85 by the taxpayer or by the CBEC and prescribes fees for filing appeal to the Tribunal.
- Section 87 provides for recovery of any amount due to Central Government.
- Section 93 empowers the Government to grant exemption from Service Tax.
- Section 94 empowers the Government to make rules for export of taxable services, exemption or rebate on exported taxable services and rebate of tax on input services and goods.
- Section 95 empowers the Central Government to remove difficulties in respect of new services within a period of two years.
- Section 96 provides for consequential amendment.
- Section 96A to 96-I provides for Advance Rulings.

SERVICE TAX COMPLIANCES

Registration (Form ST-1, ST-2)

- Within 30 days from the date on which service tax is levied on any service or within 30 days of commencement of business by the assessee whichever is later. [Rule 4(1)]
- In case of registration of non-resident, refer rule (6).
- Centralised registration — same as in rule 4(1) or as decided by the service provider [Rule 4(2)]
- Registration of specified categories of persons, i.e., service

receivers and input services distributors is required under Service Tax (Registration of Specified Categories of Persons) Rules, 2005, w.e.f. 16-6-2005.

Payment of Service Tax (Form TR-6 or GAR 7 for e-payment)

- (a) Payable by individuals, proprietary concerns, partnership firms :

Payable on amounts received during the quarter	Due date (upto 31-3-2005)	(W.e.f. 1-4-2005)
1st April to 30th June	25th July	5th July
1st July to 30th September	25th October	5th October
1st October to 31st December	25th January	5th January
1st January to 31st March	31st March	31st March

- (b) Payable by persons other than individuals, proprietary concerns, partnership firms :

Payable on amounts received during the quarter	Due date (upto 31-3-2005)	(W.e.f. 1-4-2005)
April	25th May	5th May
May	25th June	5th June
June	25th July	5th July
July	25th August	5th August
August	25th September	5th September
September	25th October	5th October
October	25th November	5th November
November	25th December	5th December
December	25th January	5th January
January	25th February	5th February
February	25th March	5th March
March	31st March	31st March

Notes :

- Vide N. No. 1/2005-ST, dated 14-1-2005, the payment for March quarter or March month shall be payable by 31st March of same calendar year [proviso to rule 6(1)].
- Vide Notification No. 7/2005-ST, dated 1-3-2005, w.e.f. 1.4.2005, due date for service tax payment by all service tax assesseees will be 5th of the following month or quarter, as the case may be, except for March where it shall be 31st day of March of that calendar year itself.
- Voluntary payment of service tax or amount collected in excess — to be deposited forthwith [section 73A].
- E-payment can be made by sixth day of every month vide notification No. 39/2007- ST dated 12-9-2007

Returns (Form ST-3, ST-3A)

For the half year:	To be filed by
1st April to 30th September	25th October
1st October to 31st March	25th April

For delayed filing of returns, late fee is payable as prescribed in Rule 7C of the Service Tax Rules, 1994. The return can also be filed electronically.



Revised Returns (w.e.f. 1-3-2007)

Returns of Services Tax can be revised within 60 days from the date of submission of original return [Rule 7B]

CENVAT CREDIT

- For CENVAT credit, prescribed forms as required under

Following forms have been prescribed under Cenvat Credit Rules –

Form	Notification No.	Rule	Relating to	Due date	Duration
ER-1	Notification No. 25/2004 – Central Excise (NT) dated 27.09.2004	Rule 12 of Central Excise 2002 and rule 9(7) of CENVAT Credit Rules, 2004	Return of excisable goods and availment of CENVAT credit	Within 10 days of from the close of month	Monthly
ER-2	Notification No. 41/2004 –Central Excise (NT) dated 25.11.2004	Rule 17(3) of Central Excise 2002 and rule 9(7) of CENVAT Credit Rules, 2004	Monthly return of excisable goods and receipt of inputs and capital goods	Within 10 days of from the close of month	Monthly
ER-3	Notification No. 25/2004 –Central Excise (NT) dated 27.09.2004	Rule 12 of Central Excise 2002 and rule 9(7) of CENVAT Credit Rules, 2004	Return of excisable goods and availment of CENVAT credit Manufacturer availing exemption under a notification based on the values or quantity of clearance of financial year	Within 20 days of from the close of quarter	Quarterly
ER-4	Notification No. 35/2004 –Central Excise (NT) dated 01.11.2004	12(2)(a) of the Central Excise Rules, 2002	Annual Financial information statement in relation to material and components used for manufacture.	On or before 30th November	Annually
ER-5	Notification No. 40/2004 –Central Excise (NT) dated 25.11.2004	9A(1) of the CENVAT Credit Rules, 2004	Return of principal input use for production	On or before 30th April	Annually
ER-6	Notification No. 41/2004 –Central Excise (NT) dated 25.11.2004	9A(3) of the CENVAT Credit Rules, 2004	Return for Receipt and consumption of each principal input with reference to the quantity of final products manufactured	Within 10 days of from the close of month.	Monthly
ST-3	Notification No. 33/2005-ST dated 20-10-2005 Rules, 2005	Rule 9 (9, 10) of CENVAT Credit Rules, 2005	Return to be submitted by output service provider and Input Service distributor	within 30 days of the close of	Half-yearly

CENVAT Credit Rules, 2002 should be used.

- CENVAT Credit Rules, 2004 have replaced the Service Tax Credit Rules, 2002, and CENVAT Credit Rules, 2002 w.e.f. 10.09.2004, CENVAT Credit Rules, 2004 shall apply for availing credit of both, service tax and excise duty.

GIST OF OBLIGATIONS IN SERVICE TAX

Section	Obligation	Frequency	Time Limit be used	Form to	Rule
68(2)	Payment of Service Tax	Monthly (by cash/cheque)	For corporates and other assesseees, by 15th day of the following month	TR-6 Challan (GAR-7 Challan for e-payment)	6
68(2)	Payment of Service Tax	Quarterly	For individuals and firms, by 5th day of the following month of the quarter ended	TR-6 Challan	6
68(2)	Payment of Service Tax	March quarter or month	25th March of the same calender year	TR-6 Challan	6

Compliances under Service Tax

69(1)	Application for Registration under Service Tax Rules	One time at the commencement of service or service being taxed	Within 30 days from the date on which tax is levied or business is commenced	Form ST-1	4(1)
69(1)	Grant of certificate of registration	One time	Within 7 days of application ; otherwise, it will deemed to have been granted	Form ST-2	4(5)
69(1)	Change in certificate of Registration	On change of particulars or information	Within 30 days or change	On plain paper	4(5A)
69(1)	Surrender of certificate of registration	On cessation of business	Immediately	N.A.	4(7) 4(8)
69(2)	Registration of Special category of persons (Service receiver input service distributor	One time	Within 30 days of commencement of business or 16-6-2005, whichever is later	Form ST-1	Rule 3 of Service Tax Registration of (Special categories of persons) Rules, 2005
70	Return of Service Tax (in triplicate)	Half yearly	Within 25 days of end of each half year	Form ST-3/ST-3A	7
70	Filing of revised return	If required	Within 60 days from submission of original return	Form ST-3	7B
68, 70	Provisional deposit of Service Tax on self assessment	Monthly or quarterly and as per Rule 6(4) and 6(5)	Not prescribed but subject to sections 68 and 70	Form ST-3A	6(4), 6(5), 6(6), 7
73A	Depositing of service tax collected	Collection of tax from any person in excess or where not required to be collected, if any.	Forth with	TR-6 challan	6
85	Appeals to Commissioner of Central Excise (Appeals)	If required by assessee	Within 3 months of the receipt of order sought to be appealed including order denying any	Form ST-4	8
86(1)	Appeals by the assessee against the order of Commissioner of Central Excise (Appeals) under section 85 to the Appellate Tribunal (CESTAT)	If required	Form ST-5 – within 3 months of the receipt of order sought to be appealed Form ST-6 within 45 days from the date of receipt of notice	Form ST-5 Form ST-6	9
86(2)	Appeals by the Board against the order of	If required	Within 3 months of the receipt of order sought to be appealed	Form ST-7	9

Compliances under Service Tax

	Commissioner of Central Excise under section 84 to the Appellate Tribunal (CESTAT)				
86(2A)	Appeals by the Commissioner against the orders passed by the Commissioner (Appeals) under section 85	If required	Within 3 months of the receipt of order sought to be appealed	Form ST-7	9

Penal Provisions

	<i>Default</i>	<i>Penal Provisions</i>
70 (Rule 7C)	Date filing of returns	For delay of 15 days – Rs. 500 ; For delay between 16-30 days – Rs. 1000 For delay beyond 30 days – Rs. 1000 + Rs. 100 per day of default subject to maximum amount as prescribed under section 70
73B	Delay in payment of tax on amount collected in excess	Simple interest @ rate between 10 and 24 per cent to be prescribed
73C	To protect revenue in certain cases	Provisional attachment of property during pendency of proceedings.
75	Delay in payment of Service Tax	¹ Simple interest @ 13% p.a. for the delayed period
76	Failure to pay Service Tax	In addition to paying service tax and interest u/s. 75, not less than [two hundred rupees per day of default or two percent of tax per month, whichever is higher, subject to total penalty not exceeding service tax payable].
77	Penalty for contravention of any provision or rule for which no specific penalty is provided i.e., service tax not levied or paid or short levied or paid or erroneously refunded due to fraud etc.	Penalty which may extend to an amount not exceeding Rs. 1,000 for each such failure. 8 Suppressing value of taxable service, (1) In addition to Service Tax and interest, a sum which shall not be less than, but which shall not exceed twice the amount of service tax not levied/paid or short levied/paid or erroneously refunded. (2) [Where service tax is paid alongwith interest payable within 30 days of order, penalty shall be 25 per cent of the tax determined].
79	Failure to comply with notice	A sum which shall not be less than ten per cent but which shall not exceed fifty per cent of the amount of the service tax that would have been avoided, had the return accepted as correct.
87	Non-payment of amounts due to Central Government.	Recovery of amount from third parties, attachment and sale of property and as arrears of land revenue.
Rule 14 of CENVAT Credit Rules, 2004	Credit wrongly taken or erroneously refunded	As per section 11A or 11AB of Central Excise Act/Section 73 and 75 of Finance Act, 1994,
Rule 15 of CENVAT Credit Rules, 2004	Taking credit wrongly or wrong utilization of credit	Confiscation of goods, Rs. 10,000 or duty involved, whichever is greater.