SERVICE TAX RULES, 1994

1. ***What is the relevance of "Service tax Rules 1994" in Service tax?***

   In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government has incorportaed Service Tax Rules for providng provisions related to procedural compliances under Finance Act, 1994 namely registartion, payment of tax, filing of return, revision of return, adjustment of tax, maintenance of records, issue of invoice etc.

2. ***Whether CBEC has the power of appointment of officers?***

   Yes, as per rule 3 of Service tax Rules 1994,the Central Board of Excise and Customs may appoint such Central Excise Officers as it thinks fit for exercising the powers under Chapter V of the Act within such local limits as it may assign to them .CBEC may also specify the taxable service in relation to which any such Central Excise Officer shall exercise his powers.

3. ***When should a prospective assessee obtain registration?***

   When a person commences business of providing a taxable service, he is required to register himself within 30 days of such commencement of business. In case service tax is extended to a new service, an existing service provider must register himself within a period of 30 days from the date of new levy.

4. ***How much time is taken for the issuance of the Registration Certificate?***

   The Registration certificate should be issued within a period of seven days from the date of submission of application ST-1 along with all relevant details/documents.

   In case the registration certificate is not issued within seven days, the registration applied for is deemed to have been granted. ***[Rule 4(5) of the STR, 1994***]*.*

   However, in case of centralized registration, no such time limit is prescribed.

5. ***Is there any provision for centralized registration?***

   Service providers having centralized accounting or centralized billing system who are located in one or more premises, at their option, may register such premises or office from where centralized billing or centralized accounting systems are located and thus have centralized registration.

   *Commissioner of Central Excise/Service Tax in whose jurisdiction centralized account or billing office of the assessees exists, is empowered to grant centralized registration in terms of [****Service Tax 4(2) and (3) of Service Tax Rules,1994].***

6. ***In case of multiple services provided by an assessee, is separate registration certificate***

required for each service?

*As per**[sub-rule (4) of rule 4 of the Service tax rules, 1994],** only one Registration certificate is to be taken even if the person provides more than one service from the same premises for which registration is sought.*

7. ***What should be done with the Service Tax Registration on cessation of business of providing taxable service -?***

   *The Service Tax Registration certificate (ST-2) should be surrendered to the concerned Central Excise / Service Tax authorities **[Rule 4(7) of the STR, 1994].Also an undertaking needs to submitted with the department which has been provided in the Trade Notice 16/2012.***

8. ***Whether issue of Invoice/Bill/Challan is mandatory? When should the same be issued?***

   Issue of Invoice/Bill/Challan by a Service Tax assessee is mandatory as per Rule 4A of the STR, 1994. The same should be issued within 30 days from the date of completion of taxable service or receipt of payment towards the service, whichever is earlier.

   Provided also that in case the provider of taxable service is a banking company or a financial institution including a non-banking financial company providing service to any person, the period within which the invoice, bill or challan, as the case may be, is to be issued, shall be forty-five days.

   Provided also that wherever the provider of taxable service receives an amount up to rupees one thousand in excess of the amount indicated in the invoice and the provider of taxable service has opted to determine the point of taxation based on the option as given in Point of Taxation Rules, 2011, No invoice is required to be issued to such extent.

   *However, if the service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically, the Invoice/Bill/Challan shall be issued within 30 days from the last day of the said period **(Proviso to Rule 4A (1) of the STR 1994).***

9. ***Is there any prescribed format for the Invoice/Bill?***

   *There is no prescribed format for issue of Invoice. However, the invoice/bill/challan should contain the following information **(Rule 4A of the STR, 1994):***

   i. *Serial number.*
   ii. *Name, address and registration no. of the service provider.*
   iii. *Name and address of the service receiver.*
   iv. *Description, classification and value of taxable service being provided or to be provided.*
   v. *The amount of Service Tax payable (Service Tax and Education cess should be shown separately)*

   ***Note**: If the service provider is a Banking company, the details at Sl. No (i) and (iii) are not necessary.*

In respect of the taxable services relating to the transport of goods by road, provided by the Goods Transport Agency, the service provider should issue a consignment note containing the following information ***(Rule 4B of the STR, 1994): -***

i. *Serial Number*
ii. *Name of the consignor and consignee*
iii. *Registration no. of the vehicle*
iv. *Details of the goods transported*
v. *Details of the place of origin & destination Person liable for payment of Service Tax (consignor /consignee / GTA)*

10. What is the preservation period for service tax records and documents?

All records and documents concerning any taxable service, CENVAT transactions etc. must be preserved for a minimum period of 5 years immediately after the financial year to which such records pertain ***(Rule 5(3) of Service Tax Rules 1994****.)*

11. Are there any statutory documents prescribed by the Government such as specified invoice Performa, specified registers etc. for use by the service providers?

There are no specific statutory records which have to be maintained by a Service Tax assessee. The records including computerized data, if any, which are being maintained by an assessee on his own or as required under any other law in force, such as Income Tax, Sales Tax etc. are acceptable for the purpose of Service Tax - ***(Rule 5(1) of the STR, 1994).***

However, under the revised rule 5(2) of the STR, 1994 (with effect 1st july,2012), the assessee is required to provide to the jurisdictional Superintendent of Central Excise/Service Tax a list, in duplicate, of all the records prepared or maintained by the assessee for accounting of transactions in regard to (a) providing of any service (b) receipt or procurement of input services and payment for such input services; (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods; (d) other activities, such as manufacture and sale of goods, if any and all other financial records maintained by him in the normal course of business,

12. Can a Service Tax officer access an assessee's registered premises?

As provided under ***Rule 5A of STR, 1994****, an officer authorized by the Commissioner can have access to an assessee's registered premises for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.*

13. What is the due date for payment of Service Tax?

Due date for the payment of service tax has been laid down in amended Rule 6(1) of the Service Tax Rules, 1994, namely:—

"(1) The service tax shall be paid to the credit of the Central Government,—

(i)by the 6th day of the month, if the duty is deposited electronically through internet banking; and

(ii)by the 5th day of the month, in any other case,

immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard.

Provided that in case of individual or proprietary firm or partnership firm, the payment of service tax is made quarterly .Thus, the due date of service tax shall be the 6th day/ the 5th day of the month, as the case may be, immediately following the quarter in which the service is deemed to be provided as per the rules framed in this regard.

Provided further that the due date of service tax for the service deemed to be provided in the month of March, or the quarter ending in March, shall be 31st day of March of the calendar year."

Provided also that in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have the option to pay tax on cash basis rather than accrual basis.

14. Can service tax be paid in advance, where the gross amount has not yet been received?

[Rule 6(1A) of Service Tax Rules, 1994] *whereby service tax can be paid in advance to the credit of the central government and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period. The assessee is required to intimate the details of the amount of service tax paid in advance to the jurisdictional superintendent of central excise/Service tax within a period of 15 days of such payment.*

15. Can service tax be paid by cheque?

Yes, service tax can be paid by cheque. ***[Rule 6(2A) of Service Tax Rules, 1994]***

16. When paid by cheque, which date will be treated as date of payment?

The date of deposit of cheque is the date of payment of Service Tax. If the cheque is dishonored, it would mean as if the Service Tax has not been paid and the relevant penal consequences would follow. ***[Rule 6(2) of the STR, 1994]***

17. Can any adjustment of tax liability be made by an assessee on his own, in cases when Service Tax has been paid in excess?

Yes. Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee.-

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

In all other cases of excess payment, refund claims have to be filed with the Department. The refund claims would be dealt as per the provisions of Section 11B of the Central Excise Act, 1944, which is made applicable to Service Tax vide Section 83 of the Finance Act 1994.

It is important to note that any amount of Service Tax paid in excess of the actual liability, is refundable, only if it is proved that the claimant of refund had already refunded such amount to the person from whom it was received or had not collected at all (Section 11 B of the Central Excise Act, 1944 which is applicable to Service Tax matters under Section 83 of the Act).

18. What are the provisions related to return a service tax assessee has to file?

i. *Every assessee has to submit a half-yearly return in Form `ST-3' or `ST-3A', as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return.* ***[Rule 7 (1) of STR 1994]***
ii. *The last date of filing return is 25th of the month following the particular half-year.* ***[Rule 7 (2) of STR 1994]***
iii. *The Service tax return should be filed electronically.* ***[Rule 7 (3) of STR 1994]***
iv. *The Central Board of Excise and Customs can extend the period referred to in sub – rule (2) by an order if necessary under circumstances of special nature to be specified in such order.* ***[Rule 7 (4) of STR 1994]***

19. Whether an assessee can revise the return?

An assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of ninety days from the date of submission of the return under rule 7. ***[Rule 7B of STR 1994]***

20. What are the penal consequences in delay of return?

Where the return is submitted after the date prescribed for submission of such return, the person liable to submit the said return shall pay to the department for the period of delay of-

(i) 15 days from the date prescribed for submission of such return, an amount of 500 Rupees.

(ii) beyond 15 days but not later than 30 days from the date prescribed for submission of such return, an amount of 1000 Rupees; and

(iii) beyond 30 days from the date prescribed for submission of such return an amount of 1000 Rupees plus 100 Rupees for every day from the31st day till the date of furnishing the said return:

Provided that the total amount of penalty shall not exceed the amount specified in section 70 of the Act ***[Rule 7C of STR 1994]***

In case, the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty.

21. What is Form ST-4 and Form ST-5? What is the difference between the two?

Form ST-4	***Form ST-5***
1. Form ST-4 is form in which appeal under section 85 of the Act to the Commissioner of Central Excise (Appeals) is filed. *2. The appeal is filed in duplicate and shall be accompanied by a copy of order appealed against.* ***[Rule 8(1) & (2) of STR 1994]***	*1. Form ST-5 is form* in *which an appeal under sub-section (1) of section 86 of the Act to the Appellate Tribunal shall be made.* *2. The appeal is filed in quadruplicate and shall be accompanied by a copy of the Order appealed agains (one of which shall be a certified copy).* ***[Rule 9 of STR 1994]***

22. What are the procedures and facilities for large taxpayer in Service tax Rules?

Rule 10*- Notwithstanding anything contained in these rules, the following rules shall apply to a large taxpayer,-*

(1) A large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises.

Explanation: *A large taxpayer, who has obtained a centralized registration under sub rule (2) of rule 4, shall submit a consolidated return for all such premises.*

(2) A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.

(3) A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.

(4) Any notice issued but not adjudged by any of the Central Excise officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise officers of the said unit.

(5) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large taxpayer.

23. *Can the Department ask for more information than what assessee is submitting to it in the Form ST-1 and ST-3?*

Yes. If it is felt necessary, the Department can call for additional information/ documents for scrutiny, as per Rule 6(6) of the STR, 1994 and Sec. 14 of the Central Excise Act, 1944 which is made applicable to Service Tax matters, as per Sec. 83 of the Finance Act, 1994.

Rule 5A of STR, 1994 provides that every assessee, on demand, is required to make available to the central excise/service tax officer authorized by the Commissioner or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or within such further period as may be allowed by such officer or the audit party, the following records/documents for the scrutiny of the officer or audit party:

- *i. the records as mentioned in Rule 5(2) of STR, 1994;*
- *ii. trial balance or its equivalent; and*
- *iii. the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961).*

However, such officer/audit party may allow further period for submission of the aforesaid records/documents

In the event of failure to make available the records/documents, a penalty of Rs. 5000 or Rs. 200 for every day during which such failure continues starting with the first day after the due date, till the date of actual compliance, whichever is higher, is imposable on the assessee under amended section 77 (with effect from 12th May, 2008).